

DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:
THEODORE E. POWELL,

Complainant,

WASHINGTON TEACHERS' UNION,
AMERICAN FEDERATION OF
TEACHERS, *ET AL.*

Respondents.

PERB Case No. 11-U-26

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**DEFENDANTS WASHINGTON TEACHERS' UNION, LOCAL #6, NATHAN
SAUNDERS, CLAY WHITE, CHARLES MOORE, AND CANDI PETERSON'S
OPPOSITION TO THEODORE POWELL'S APPEAL MOTION**

Washington Teachers' Union, Local #6 ("WTU"), Nathan Saunders, Clay White, Charles Moore, Candi Peterson (collectively "WTU Respondents), by their undersigned counsel, hereby oppose Complainant Theodore E. Powell's Motion to Appeal these proceedings.

WTU Respondents hereby oppose Theodore Powell's Appeal of the Board's Decision and Order, Opinion No. 1136, entered in corrected form on October 7, 2011. While styled as an Appeal, Complainant apparently seeks reconsideration of this Board's well reasoned decision. This request should be denied for at least two reasons. First, in accordance of PERB Rule 559.2, this Board's decision became final on October 17, 2011 and a motion for reconsideration is now untimely. *See* PERB Rule 559.2.

Second, Complainant presents no new arguments or issues of fact that warrant reconsideration of the Board's well reasoned Decision and Order. Mr. Powell grossly falls short of the steep burden a party must meet in order to substantiate granting a motion for reconsideration. PERB has consistently held that a "motion for reconsideration cannot be based upon a mere disagreement with its initial decision." *See e.g., Univ. of D.C. Faculty*

Assoc./National Educ. Assoc., PERB Case No. 09-U-26, Slip Op. 1004, *10, (Dec. 30, 2009) (citing *AFGE v. Local 2725 v. D.C. Dep't of Consumer and Regulatory Affairs and Office of Labor Relations*, _ DCR_, Slip Op. No. 969, PERB Case No. 06-U-43 (2009); *D.C. Dep't of Human Services and Fraternal Order of Police Dep't of Human Services Labor Comm.*, 52 DCR 1623, Slip Op. No. 717, PERB Case Nos. 02-A-04 and 02-A-05 (2003); *D.C. Metro. Police Dept. and Fraternal Order of Police/Metro. Police Dept. Labor Comm. (Shepherd)*, 49 DCR 8960, Slip Op. No. 680, PERB Case No. 01-A-02 (2002); *AFSCME Local 2095 and AFSCME NUHHCE and D.C. Comm'n on Mental Health Services*, 48 DCR 10978, Slip Op. No. 658, PERB Case No. 01-AC-01 (2001)); see also *Cephas v. Fraternal Order of Police/Department of Corr. Labor Comm.*, PERB Case No. 01-U-17, Slip Op. 678, *3 (May 24, 2002) (same). Here, this Board's ruling should not be disturbed because Complainant merely restates his original claim, in apparent disagreement with the Board's decision, and without any rationale as to why the Board's Decision and Order should be disturbed.

CONCLUSION

For the foregoing reasons, WTU Respondents respectfully requests that Complainant's motion fashioned as an "Appeal" be denied.

Dated: March 16, 2012

Respectfully submitted,

JOSEPH, GREENWALD & LAAKE, P.A.



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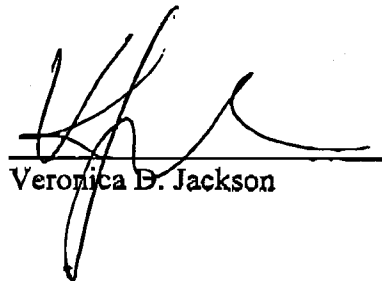
CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March 2012, a true and accurate copy of the foregoing was served via certified first class mail and facsimile to:

Daniel J. McNeil, Esq.
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Counsel for American Federation of Teachers, AFL-CIO, Randi Weingarten, and Al Squire

And served via certified first class mail on:

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**Joseph, Greenwald &
Laake, P.A.**

Fax

To: PERB From: Veronica Jackson
Fax: (202) 727-9116 Pages: 4 pages
Phone: _____ Date: March 16, 2012
Re: Defendant's Opposition to Operator: Ellen Lee
Powell's Appeal
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Public Employee Relation Board

District of Columbia
1100 4th Street S.W. Suite E 630
Washington D.C.20024

February 4, 2012

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804-328-2782, cell 804 306-8683

(this appeal was sent by mistake to the old address)

Appellant

V.

American Federation of Teachers (7)

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Al Squire AFT (2)
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Washington, D C 20001
Phone: 202-879-4400

Washington Teachers Union (8)

Nathan Saunders WTU (3)
Clay White WTU (4)
Charles Moore WTU (5)
Mrs. Candi Peterson WTU (6)
1825 K Street, N.W. Suite# 1050
Washington, D.C. 20006
Phone: 202-293-8600

Defendants

Appeal

Case No: PERB Case NO. 11-U-26

Comes Now, Your Appellant, Theodore E. Powell, Pro 'Se and hereby files this complaint for Black Mailing, breach of contract, employment discrimination, violation of the collective bargaining agreement ,misrepresentation and unfair labor practices. Jurisdiction in this case is based on the allegations giving rise to this complaint occurred in the District of Columbia .The Appellant is a resident of Virginia. The Defendants reside or do business in the District of Columbia. The statute of limitation is within designated time and there is no Immunity issue. This action is brought pursuant to violations of Title VII of the Civil Rights of 1964 as amend. This compliant shows cause and damages to the Appellant as the of result extrinsic fraud, malpractice medical and deceit used to favor opinions to violate the Plaintiff's 14th and 5th amendment rights, The Union is a crime organization as the Mafia,

which caused pain, mental, emotional suffering theft of teachers monies and possible death. These violations damaged the Appellant's Civil Rights, violated contract law and Terminated the Appellant from his position and blacked balled the Appellant from teaching in the District of Columbia and Virginia by use of unspoken words. The Appellant is stating violations of Constitutional Rights, **conspiracy and Misconduct** of their positions as the basis, as is herein after stated and set forth as basis therefore:

1. 1. The Appellant states **Extortion is a criminal act, a felony of five years in prison** , which occurs when a person obtains money, goods, or a **desired behavior from another person through** violence or **threats**. The threat to not represent is Extortion .It is also can be called out **wresting or exaction**. This offense is commonly practiced by **organized crime groups and The WTU is a Crime Group by definition and their action**. In its formal definition, it means the infliction of something, for example **pain and suffering, or making somebody endures something unpleasant**. {(Ransom is another form of extortion, (**representation and back salaries**) in which **the extortionist holds something of value from the victim only to be returned upon a condition, be it a payment of money, information or other demands. This is unfair law practices and Peonage**)}.
2. The Plaintiff states unfair law practices has the Washington Teachers Union stated to Plaintiff that they would represent the Plaintiff in March of 2011, but they never did and they allowed the time to run out, **(time never started without a notice from WTU saying that they weren't going to represent the Plaintiff)** with their fake grievance procedure dated November 8.2010. The PERB stating **Timed barred has erred**. This is unfair law practices and they need to be punished. Please appoint the Plaintiff a lawyer in these matters. **This is unfair law practices and criminal matters**
3. The Appellant states AFT and WTU are refusing to bargain collectively in good faith with the exclusive representative, the co -conspirator Traci Higgins of DCPS, on 1620.15 of the DC code and termination on a fraudulent report. The Appellant 's worker compensation claim number is 301-011421-140-001. The Appellant was injured on job; Worker Compensation can have their doctor examine me to see what is my status. If okay send me back to work, if not, treat me and retire me under worker compensation. **This is unfair law practices.**

4. The Appellant states that he was never given paper work stating that the Appellant was on administrative leave for fitness for duty and Appellant should be working and being paid by the DCPS. The Union did not challenge the Fitness for duty examiner because the Union refused to attend and support the Appellant at the exam. After a verbal apology the Union wanted a written apology that they could use against the appellant to say this is why the Union is not represent you. But **this apology is based on my pathology of PTSD** .The Union conspired with DCPS to commit a crime of Fraud against the Appellant. The Examiner Lied and Union did not provide any Due Process and Candi Peterson stated that Appellant cannot do anything against DCPS unstill the Union give up all administrative responsibilities. This is extortion by the Union a criminal act. **This is unfair law practices.**
5. The Appellant claims **Blackmail** that WTU is interfering with, restraining, or coercing any employee or the District in the exercise of the right guaranteed by this subchapter. The violation of 14th, 5th amendment, worker compensation, representation in doing Fitness for duty and Due Process rights. The WTU and AFT are not trying to exhaust their administrative methods but are conspiring with the DCPS. **This is unfair law practices.**
6. The Appellant claims that AFT and WTU is causing or attempting to cause the District to discriminate against an employee (*violation of DC codes 1620.15 and 32-1303 that 's the Law*) by injuries on the job, the 14th, 5th, **Due Process**, worker compensation, Teacher Evaluation Fraud, black mailing and termination. **This is unfair law practices.**
7. The Appellant claims the AFT and WTU has discharged or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition or given any information or testimony under this subchapter. The Appellant was fired and did not receive any support. The filing of Step II grievance with no inattention of following through on the grievance work or resolving the Appellant issues. **This is unfair law practices.**
8. The Appellant states misrepresentation by the Washington Teacher Union, they have provided no enforcement for this teacher's rights, under the established guidelines as the Collective Bargaining Unit with DCPS. There is "**no freedom of choice in representation**" or explanation of why the ostentatious WTU have been insubordinate in their operation to restore the Appellant

back to his position and back pay. This is stated in the DC code 1620.15 of enforce leave .The Appellant was proven innocent in a court of law, on September 29th 2010. The WTU's grievance procedure and dialogue with DCPS were unproductive and invisible as they have failed in their responsibilities as a Union. Making this Law suit imperative for the Appellant to survive and get WTU to do their jobs. **Steele v. Louisville & Nashville R. Co.(cb7-1)**, this Court has emphatically and repeatedly ruled that an exclusive bargaining agent under the Railway Labor Act is obligated to represent all employees in the bargaining unit fairly and without discrimination because of race and has held that the courts have power to protect employees against such invidious discrimination. It charged that such discrimination constituted a violation of petitioners' right under the Railway Labor Act to fair representation from their bargaining agent. And it concluded by asking for relief in the nature of declaratory judgment, injunction and damages.

9. The Appellant states that monies from the Appellant's checks are deducted for (the Ades 's law firm) for representation in the WTU's teachers legal matters. The Appellant had to eliminate the WTU 's Lawyer to get a fair and honest representation in the court system .The Appellant would have convicted himself from the poor representation, conspiracy and deceitful ways of WTU's lawyer who misrepresented the Appellant's 5th amendment rights, Due Process and right to have a speedy trial. **Vaca v. Sipes (cb9-1)** held that the duty is breached only when the union's conduct towards a bargaining unit member is arbitrary, discriminatory, or in bad faith.
10. The Appellant states that the WTU failed to establish their support and representation when the Appellant was being abused, molested and almost killed at Woodson High School, where the Appellant was assaulted over seven times by students. The administration just turned their heads and MPD stated we do not believe the Appellant. This is unbelievable and misconduct for their authoritarian positions under the 14th amendment. The WTU was negligent in its efforts to get involved and implement a strong safe plan for success, as a part of the Collective Bargaining Agreement or to visit the school to investigate and see first and the Appellant's concerns. **Ford Motor Co. v. Huffman (cb7-19, p[11])** The bargaining representative's duty not to draw 'irrelevant and invidious' distinctions among those it represents does not come to an abrupt end, as the respondents seem to contend, with the making of an agreement between union and employer. Collective bargaining is a continuing process. Among other things, it involves day-to-day adjustments in the contract and other working rules,

resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by contract

11. The Appellant states that he is suffering from two injuries that are documented by reports from Medical Specialist Doctors and Licensed Professional Counselor from injuries received from assaults on the job. There is nerve Damages in the Appellant's feet no. 301003310020001 and Post Traumatic Syndrome Disorders with case number of 301-011421-140-001 and DCPS told worker compensation to ignore. All Administrators were insubordinate to identify the severity of not reporting. The WTU failed to get immediate care for the Appellant in these matters. The Collective Bargaining Unit, for a teacher who was injured on the job by maltreatment and gross negligence has failed again. Worker Compensation could send the Appellant to their doctor for treatment and determine whether to send me for treatment or back to work. The Crime Victim's Program of Superior Court was only organization who gave support to the Appellant.

Conley v. Gibson (cb7-14, p[9]) "By virtue of this contractually derived status as the exclusive enforcer of the collective agreement, the union assumes a heavy responsibility to exercise its control on behalf of, rather than against the individual employee. The collective agreement creates rights in the individual employee which are enforceable under section 301. In the absence of a union controlled grievance procedure the individual can sue and enforce his rights in his own behalf. The effect of the contractual provision giving the union exclusive control over the grievance procedure is to deprive the individual of his ability to enforce the contract on his own behalf. The union, having deprived the individual of his ability to enforce his rights, has a special obligation to act on his behalf."

12. The Appellant states during his criminal case he asked the WTU for better Lawyer (not Harold Martin) because he was violating the Appellant's civil, 5th and 14th amendments rights. Harold Martin was compelling to school's MPD interest. There was a variance of interest as Harold Martin was intimidating the Appellant to take a plea in court and ran the Appellant's witness away.

The WTU's Charles Moore statement which was approved by the WTU and AFT, **"that if you do not like our lawyer then go get your own"**. The Appellant did ask for a new lawyer but WTU refused to help me in this matter. **Conley v. Gibson (cb7-14, p [9])**

13. The Appellant states that the Harold Martin was prejudicial to the Appellant's case and ask the WTU to remove him by email to the president of the union. Harold Martin deliberately corrupted and created a hostile environment. Harold Martin destroyed communication efforts

with the new Public Defender because what was told about the Appellant. The second public defender wanted the Appellant to take a plea in the Mental Health Court and suggested that The Appellant do not tell the truth and brings his medicine to show the court that the Appellant is sick. This goes back to the MPD`s fraudulent statement on the arrest of the Appellant. When the WTU did not provide support and representation to the Appellant. The Appellant`s 5th amendment rights were being abuse by this prejudice statement by the MPD. The Appellant was in a room crying and talking on the phone and nobody, was on it and the Appellant was out of his mind. This did not happen but, the statement it is being used against Appellant then and now. This is defamation of character by the MPD and compelled by Harold Martin to the New Public Defenders was an exploitation association. Conley v. Gibson (cb7-14, p[9])

14. The Appellant states that Charles Moore of WTU is advising DCPS`s Traci Higgins against the Appellant, after an argument to remove Harold Martin as the Appellant`s lawyer in the criminal case. The Appellant was placed on paid Administrative on December 10, 2009 and Traci Higgins name was the first name on the list be cc. Enforced leave should have happen on the December the 16,2009.Traci Higgins knew nothing about Enforce Leave as Traci Higgins made four errors in trying to make it work for WTU. The Appellant communicated with Charles Moore about Enforce Leave and he stated that Traci Higgins could do that .Charles Moore admitted that he had a case like that before. Charles Moore ignited this enforced with a friend and supported Traci Higgins to conspire against the Appellant; this is the payback for challenging WTU, Steele v. Louisville & Nashville R.R. (cb7-4,p[11])• "...the duty of fair representation has stood as a bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law
15. The Appellant states that he asked the WTU for support and a representative to go with the Appellant for Fitness for Duty exam, the Appellant is aware that he could have representation during this process, but the WTU refused to support and represent. Now, Traci Higgins has conspired with the Malpracticing Dr. Webb to use his bogus empty scratch legal pad to terminate the Appellant under false pretense with Charles Moore support. The Appellant did not have a Due Process hearing nor the right to have Dr. Webb cross examine by the Appellant`s lawyer. WTU did not send the Appellant a copy of Dr. Webb`s report after signing a paper to release the information to WTU and have it sent to the Appellant. Conley v. Gibson (cb7-14, p[9])

16. The Appellant states that he did attend the Fitness for Duty with Doctor Webb he is not an independent medical examiner and I had no choice as stated in the District's Procedures, even though he is neither psychologist nor a mental health professional .His specialty is emergency medicine and surgery. He is out of his area of his expertise. This is gross negligence to provide false information to damage the Appellant as a patient in his care The Appellant was damaged from the WTU lack of support and representation. DCPS and Traci Higgins told Doctor Webb to go to my home this should not be allowed. Dr. Webb's report is Traci Higgins means of termination. He provided false information to the **Commonwealth of Virginia Department of Health Professional** and the District of Columbia Government. Doctor Webb stated that the Appellant got his name off a list of doctors. In fact this is a wrongful termination and DCPS should have recommended an independent medical examiner by the Appellant as stated in their procedures. Dr. Webb should have declined from committing Fraud and taking the money from DCPS and Traci Higgins. Higgins knowingly knew that he was not a qualified psychologist to do mental health evaluations but she conspired to do fraud to castigate the Appellant. The Appellant was not to obtain a passable fitness for duty report by Dr. Webb because of the court case. **Executive Director Mrs. Reynolds-Cane of Commonwealth of Virginia Department of Health Professional stated on Wednesday, December 15th at 2:41 pm, 2010 that this is Civil Malpractice by Dr. Arthur Webb. Steele v. Louisville & Nashville R. Co.(cb7-1).**

17. The Appellant states he was fired by Clay White which violates the contract by, WTU and AFT and he stated I will not get any support and representation from them, but The Appellant still have paid them money as long as the Appellant is a teacher in the system. Since the WTU is the Collective Bargaining Unit for teachers with DCPS the Appellant would be blocked out, until the WTU decide when and how long their want to drag these issues out. This is why the law suit is imperative because of extrinsic fraud and bias. Conley v. Gibson (cb7-14. p[9])

18. The Appellant states that he contacted the AFT's Al Squire for support and representation on these issues and they were deceitful in their methods and approach to help and hung up their phones on the Appellant. Steele v. Louisville & Nashville R. Co.(cb7-1).

19. The Appellant states that Charles Moore did organize a meeting with DCPS security for the Appellant give a statement on the criminal case. It was not cleared by Charles Moore through Traci Higgins 's office and The Appellant would have been arrested for coming on DCPS property. Charles Moore did not come to that meeting at DCPS security's office as a support and

representative of the WTU. Turning his back on the Appellant as if the Appellant was acting on his own. Conley v. Gibson (cb7-14. p[9])

20. The Appellant states that the WTU did not support and represent the Appellant on the Enforce Leave Policy when the Plaintiff was found to be innocent in a court of law. The code of District of Columbia 1620.15 states that all lost pay, leave and administrative action (removed from teaching position) shall be restored retroactively. The WTU has failed again to perform its responsibilities as the main collective bargaining unit with DCPS. Candi Peterson stated on December 17, 2010, that we might be able to do something in February, that is three months away and Appellant will be in Foreclosure. But union has done nothing. The Back pay is owed now by District of Columbia Codes 13-3303 and 1620.15 and that's the law. The WTU sent out memo on December 17, 2010 stating that one of elementary school teacher s pay were short of hours and special considerations were made for them by WTU and DCPS to get these people paid for the Christmas Holidays and they could pick up their money as late as Friday at 11 pm and the next day on Saturday. This is act of defiance by the WTU to not support and represent the Appellant as money is owed to the Appellant has created emotional pain and suffering on the Appellant and his family members on these holidays times. The WTU and DCPS are conspiring to punish the Appellant an innocent man .On December 7 ,2010 Mr. Ali from Employment Commission stated the commission received a statement that the Appellant was still apart of school district as of December 22,2010 and yet is not getting paid. Bowen v. United States Postal Service (cb9-34) held that damages must be apportioned between the employer and the union: the union is liable for any **increase** in lost pay due to its breach; employer should be left in position it would have been in had union not breached the duty of fair representation.

Appellant states a claim: The Appellant claims that are owe in compensatory damages from his contract in the amount 15 million dollars or more before taxes plus pain, suffering, job loss and mental anguish.

1. The Appellant claims WTU did not support and represent when he was injured on the job and the principal at Woodson High refused to call the report to workmen's compensation to get immediate care for the Appellant. The Appellant became neglected which cause pain and suffering in the Appellant to perform his duties as a physical education teacher. The damaged to the Appellant 's feet made it hard to stand up and be active with the students. There is

nerve damage and the Appellant is still receiving physical therapy for these injuries that happen on the job. The Appellant has a loss of feelings in his feet, toes and has pain in his legs. **The Appellant demands judgment against the Defendant WTU and Agents in the sum of 15.2 million dollars, neglect and being crippling in later life without support,(with interest and cost)**

2. The Appellant claims WTU did not support and represent when he was injured on the job from the many assaults by students, misconduct by MPD by not reporting these assaults, and the administration just turning their heads in non-recognition that these things were happening. This is neglect and a violation of the 14th amendment. The Appellant states that he has been traumatized and diagnose with Post Traumatic Syndrome from the assaults, injuries and misconduct of administrative staff. This was documented to the WTU, DCPS, Superior Court and Crime Victims of Superior Court. **The Appellant demands judgment against the Defendant WTU and agents in the sum of 15.4 million dollars for neglect and of the Post Traumatic Syndrome, from injuries and misconduct on the job, (with interest and cost)** The Appellant see himself like those soldiers coming from the war who claim Post Traumatic Syndrome how many of them return to live a normal life without anger, stress, depression and label by society. There is not a magic pill or a hocus pocus to give these solders a better life. This Appellant has it also from being assaulted and abused on the job.
3. The Appellant claims WTU did not support and represent his 5th amendment rights and Due Process by not providing the proper support and representation needed in the Appellant's criminal and civil matters. The Appellant was told to get his own lawyer which caused the Appellant and his family emotional pain, suffering and could have been jailed for six months of the Appellant's life destroying all. Later the WTU Clay White fired the Appellant from the WTU and AFT and the Plaintiff had no support and representation now. **The Appellant demands judgment against the Defendant WTU and agents (Clay white and Charles Moore) in the sum for 6.7 million dollars with interest and cost. The Appellant is demanding punitive damages on Charles Moore, Candi Peterson, Nathan Saunders and Clay White in the sum of 13 million dollars each for abuse and misconduct of their positions.**
4. The Appellant claims and demands judgment against the Defendants **for the Appellant`s back salary, leave and Medical benefits** for not returning the Appellant to his teaching position as stated in the **Code of the District of Columbia 1620.15**. It was personal attack on the Appellant, a willful and knowingly disregards to deceive and the abuse of their powerful

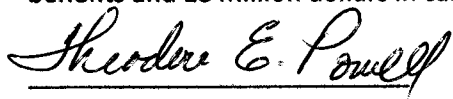
position. Appellant is demanding judgment against Defendant WTU and agents Clay White and Charles Moore) in the sum of 6 million dollars in punitive damages for wrongful termination and abuse of power.

5. The Appellant claims and demands judgment against defendant AFT Randi Weingarten and Al Squire in the sum of 16 million dollars in punitive damages in that this will never happen to another teacher in this DCPS District and United States. There have been a lot of teachers who has been ignored and shorted by these Unions. Just because the WTU has changed the personality the odor is still remains there.
6. The Appellant is asking the court to retain jurisdiction over this action to ensure full compliance with the order of this court and law on this action is based and compel the WTU to support and represent all teachers to fullest degree with dedication and appreciation (including a requirement that the Defendants file such reports as the court deems necessary to evaluation such compliance with the Impact evaluation process and teacher terminations and riffs.)

Wherefore, The Appellant respectfully requests this Honorable Court to grant the following relief:

1. Order Defendant to reinstate the Plaintiff to his former position retroactive to Woodson High or another High School.
2. Order the Defendant to pay compensatory damages to the pay for loss of salary; court cost and other related legal expenses, restoration of all rights, benefits and other entitlement of any kind or nature that would have accrued to the Appellant ,but for Defendant's illegal and improper actions.
3. Order relief in the nature of declaratory judgment, injunction, punitive and damages

Relief can be made: By returning the Appellant to another teaching position until the end of school year of 2011 and paying all back pay and leave. Then retire the Appellant with full 100% retirement benefits and 18 million dollars in cash.

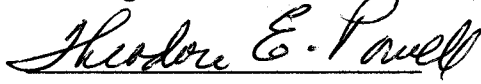


Theodore E. Powell
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804-328-2782

Certificate of Service (second service)

I hereby certify that on March 1, 2012 a copy of the foregoing appeal was sent to by U.S. Mail

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Civil Action No: 1:11-00493 (EGS)

Theodore E. Powell

October 7, 2011

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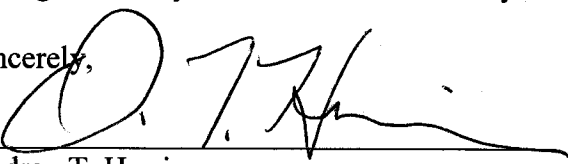
VIA U.S. MAIL

Re: Theodore E. Powell v. Washington Teachers' Union,
American Federation of Teachers, et al.
PERB Case No. 11-U-26, Slip Opinion No. 1136

Dear Representatives:

On September 16, 2011, this office transmitted via facsimile and U.S. Mail, a copy of Slip Opinion No. 1136 concerning the above referenced matter. Unfortunately, the decision and order that was transmitted contained a typographical error. Specifically, page 1 of the Slip Opinion identified the PERB Case No. as 10-U-26 rather than the correct number 11-U-26. As a result, please discard the September 16th transmission and replace it with the enclosed corrected copy. I apologize for any inconvenience caused by this error.

Sincerely,



Ondray T. Harris
Executive Director

Enclosure:

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia

Public Employee Relations Board

In the Matter of:
Theodore E. Powell

Complainant,

and

Washington Teachers' Union,
American Federation of Teachers, *et al.*

Respondents.

PERB Case No. 11-U-26

Opinion No. 1136

Motion to Dismiss
Corrected Copy

DECISION AND ORDER

I. Statement of the Case:

On April 10, 2011, Theodore E. Powell ("Complainant") filed an Unfair Labor Practice Complaint ("Complaint") in the above captioned matter against the American Federation of Teachers, AFL-CIO, et al ("Union, "respondent") pursuant to the Comprehensive Merit Personnel Act ("CMPA"), D.C. Code § 1-617.06. The Complaint alleges that the Union violated the CMPA by failing to properly represent the Complainant, or bargain in good faith, with the District of Columbia Public Schools ("DCPS") when challenging his alleged wrongful termination. As relief, the Complainant seeks compensation, reinstatement to his position, and WTU assistance or representation.

Before the Board are the Complainant's amended Complaint and the Union's Answer and Motion to Dismiss. The issue before the Board is whether the Union breached its duty of fair representation by engaging in conduct or acts that were either arbitrary, discriminatory or done in bad faith.

II. Discussion:

The Board has held that while a Complainant need not prove their case on the pleadings, they must plead or assert allegations that, if proven, would establish the alleged violations of the

CMPA. See *Virginia Dade v. National Association of Government Employees, Service Employees International Union*, Local R3-06, 46 DCR 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); and see *Gregory Miller v. American Federation of Government Employees*, Local 631, AFL-CIO and D.C. Department of Public Works, 48 DCR 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994); See also *Doctors' Council of District of Columbia General Hospital v. District of Columbia General Hospital*, 49 DCR 1137, Slip Op. No. 437, PERB Case No. 95-U-10 (1995). Furthermore, the Board views contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. See *JoAnne G. Hicks v. District of Columbia Office of the Deputy Mayor for Finance, Office of the Controller and American Federation of State, County and Municipal Employees*, District Council 20, 40 DCR 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992). Without the existence of such evidence, Respondent's actions cannot be found to constitute the asserted unfair labor practice. Therefore, a Complaint that fails to allege the existence of such evidence, does not present allegations sufficient to support the cause of action." *Goodine v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

On December 19, 2009, the Complainant was placed on paid administrative leave from Woodson High School in the District of Columbia. The Complainant was criminally charged and was prevented from entering on District of Columbia Public School property. The complainant attended a "Fitness for Duty" exam with a Doctor Webb but alleges a lack of fair representation by the Washington Teachers' Union. Further allegations include: that the Complainant was injured at work as the principal at Woodson High School but was not afforded representation by the Washington Teachers' Union and, thus, did not receive any workers' compensation, that he was assaulted by students - assaults which went unreported by the Metropolitan Police Department, that he sustained nerve damage and Post Traumatic [Stress] Syndrome; and that WTU failed to provide him with new counsel to represent him on criminal charges. The Complainant maintains that on December 7, 2010, Mr. Ali from the Employment Commission stated that the commission received a statement that the Complainant was still a part of the school district as of December 22, 2010, but was not yet getting paid.

A. Complainant's Complaint is Time Barred and Must be Dismissed

This Complaint is time barred under PERB Rule 520.4, which states that an unfair labor practice complaint "shall be filed not later than 120 days after the date on which the alleged violations occurred." See also *Gibson v. D.C. Pub. Empl. Rels. Bd*, 785 A.2d 1238,1241 (D.C. 2001). "PERB's rule concerning the time for filing exemplifies the principle that 'the time limits for filing appeals with administrative adjudicative agencies ... are mandatory and jurisdictional.'" *Gibson*, 785 A.2d at 1241 (quoting *Hoggard v. District of Columbia Public Employee Relations Board*, 655 A.2d 320,323 (D.C. 1995) (ellipse in original); *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Dep't*, 593 A.2d 641,643 (D.C.1991).

According to his own allegations, Mr. Powell was placed on administration leave on December 19, 2009. The latest factual allegation in the Complaint, although its relevance to this case is unclear, occurred on December 7,2010, when Complainant alleges that "Mr. AH from Employment Commission stated the commission received a statement that the Complainant was still apart [sic] of school district as

of December 22, 2010 and yet is not being paid." By even the most generous interpretation of the Complaint, the alleged violations for which he seeks redress occurred in 2010, more than 120 days before he filed this Complaint. Complainant bears the burden to establish that his claims are not time barred, and he has failed to do so. Therefore, his complaint must be dismissed in its entirety with prejudice. *Eg. Gibson*, 785 A.2d 1238; PERB Rule 520.4.

B. Complainant Has Not Alleged a Valid Unfair Labor Practice

In order to state a valid unfair labor practice complaint, Complainant must allege that his termination by DCPS violated the collective bargaining agreement and that the WTU treated him in an arbitrary or discriminatory manner or in bad faith. Complainant fails to allege that his dismissal from DCPS was in violation of the collective bargaining agreement. *See Gibson v. D.C. Pub. Empl Rets. Bd.* 785 A.2d 1238, 1243 (D.C. 2001) ("judgmental acts of discretion in the handling of a grievance, including the decision to arbitrate, do not constitute the requisite arbitrary, discriminatory, or bad faith element of such a violation") (citation omitted).

Mr. Powell's filing here is similar to *Gibson*. In *Gibson*, 785 A.2d at 1242, the court "agree[d] with PERB's conclusion that [Ms. Gibson] failed to state a claim against her union." *Id.* In this regard, "[Complainant]'s complaint, even if accepted as true, alleges only that the union did not properly grieve her termination. Such an allegation cannot be construed as a claim of an unfair labor practice." *Id.* Similarly, Mr. Powell's complaint here alleges that the WTU refused to represent him at a fitness for duty exam, or to provide him alternative counsel when it had already provided him with competent counsel in a criminal case- all equally discretionary, judgmental acts, which do not rise to the level of an Unfair Labor Practice. *Id.* In fact, representation in a criminal manner is not a part of WTU's duty of fair representation but rather was done as a courtesy service to its member.

Furthermore, with respect to the individual WTU Respondents, Nathan Saunders, Charles Moore, Candi Peterson, and Clay White, Complainant fails to allege sufficient conduct by any of them that, if true, would constitute an unfair labor practice. For these reasons, Complainant's Complaint must be dismissed in its entirety with prejudice.

C. Complainant's Additional Claims Cannot Be Heard By the Board

The Complainant alleges numerous other wrongs that fall outside of the Board's jurisdiction (i.e., fraud, neglect, blackmail, and violation of the Complainant's 5th and 14th amendment rights). Claims of this sort are not unfair labor practices. Therefore, these claims should be dismissed as failing to give rise to a cause of action within PERB's jurisdiction: *See D. C. Code* §§ 1-617.02, 1-617.04.

ORDER

IT IS HEREBY ORDERED THAT:

1. Theodore E. Powell's Unfair Labor Practice Complaint is denied.
2. The Washington Teacher's Union, American Federation of Teachers', *et al.* Motion to Dismiss is **GRANTED**.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

October 7, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-26 was transmitted via Fax and U.S. Mail to the following parties on this 7th day of October 2011.

Jay P. Holland
Brian J. Markovitz
Veronica D. Jackson
Joseph, Greenwald & Laake, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770

FAX & U.S. MAIL

Daniel J. McNeil, Esq.
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Washington, D.C. 20001

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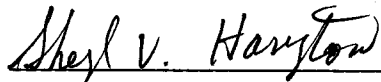
Theodore E. Powell
308 Hodder Lane
Highland Springs, VA 23075

U.S. MAIL

Courtesy Copy:

Mrs. Candi Peterson
Washington Teachers Union
1825 K Street, N.W., Suite 1050
Washington, D.C. 20006

U.S. MAIL



Sheryl V. Harrington
Secretary



Public
Employee
Relations
Board

GOVERNMENT OF
THE DISTRICT OF
COLUMBIA



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FAX COVER SHEET

To: Daniel J. McNeil, Esq.

From: PERB

Fax Number: 202-393-6385

Pages: 6 **including cover**

Phone Number:

Date: 10/7/2011

Subject: Slip Opinion No. 1136-Correction Motion Dismiss

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To: Jay P. Holland, Esq.

From: PERB

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Phone Number:

Date: 10/7/2011

Subject: Slip Opinion No. 1136-Correction on Motion to Dismiss

cc: Brian J. Markovitz, Veronica D. Jackson



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Comments:

DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:
THEODORE E. POWELL,

Complainant,

WASHINGTON TEACHERS' UNION,
AMERICAN FEDERATION OF
TEACHERS, *ET AL.*

Respondents.

PERB Case No. 11-U-26



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**DEFENDANTS WASHINGTON TEACHERS' UNION, LOCAL #6, NATHAN
SAUNDERS, CLAY WHITE, CHARLES MOORE, AND CANDI PETERSON'S
MOTION TO DISMISS AND, ALTERNATIVELY,
ANSWER TO THEODORE POWELL'S COMPLAINT**

Washington Teachers' Union, Local #6 ("WTU"), Nathan Saunders, Clay White, Charles Moore, Candi Peterson (collectively "WTU Respondents), by their undersigned attorneys, hereby move to dismiss, and alternatively, answer Theodore E. Powell's Unfair Labor Practices Complaint ("Complaint"), dated April 9, 2011.

MOTION TO DISMISS

WTU Respondents move to dismiss the Complaint on the following grounds:

A. Complainant's Complaint is Time Barred and Must be Dismissed¹

This Complaint is time barred under PERB Rule 520.4, which states that an unfair labor practice complaint "shall be filed not later than 120 days after the date on which the alleged violations occurred." *See also Gibson v. D.C. Pub. Empl. Rels. Bd.*, 785 A.2d 1238, 1241 (D.C. 2001). "PERB's rule concerning the time for filing exemplifies the principle that 'the time limits for filing appeals with administrative adjudicative agencies . . . are mandatory and

¹ Alternatively, WTU Respondents' First Affirmative Defense.

jurisdictional.” *Gibson*, 785 A.2d at 1241 (quoting *Hoggard v. District of Columbia Public Employee Relations Board*, 655 A.2d 320, 323 (D.C. 1995) (ellipse in original); *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Dep't*, 593 A.2d 641, 643 (D.C.1991) (same).

According to his own allegations, Mr. Powell was placed on administration leave on December 19, 2009. The latest factual allegation in the Complaint, although its relevance to this case is unclear, occurred on December 7, 2010, when Complainant alleges that “Mr. Ali from Employment Commission stated the commission received a statement that the Complainant was still apart [*sic*] of school district as of December 22, 2010 and yet is not being paid.” By even the most generous interpretation of the Complaint, the alleged violations for which he seeks redress occurred in 2010, more than 120 days before he filed this Complaint. Complainant bears the burden to establish that his claims are not time barred, and he has failed to do so. Therefore, his complaint must be dismissed in its entirety with prejudice. *E.g. Gibson*, 785 A.2d 1238; PERB Rule 520.4.

B. Complainant Has Not Alleged a Valid ULP²

All of Complainant’s allegations, no matter how he states them, boil down to allegations that, because WTU declined to prosecute his abuses at Woodson High School, did not provide him representation at a fitness for duty exam, and did not assist him in retaining new counsel to represent him in defense of his criminal case, he has been harmed. In other words, Complainant alleges that Respondent WTU has somehow breached its duty to bargain in good faith on his behalf or its duty to fairly represent him.

² Alternatively, WTU Respondents’ Second Affirmative Defense.

Even if such allegations were true, which they are not, Complainant must allege that his termination by DCPS violated the collective bargaining agreement *and* that WTU treated him in an arbitrary or discriminatory manner or in bad faith. Even if Complainant's allegations are true, which they are not, WTU Respondents' refusal to provide him with new counsel does not amount to arbitrary or discriminatory treatment. Furthermore, Complainant fails to allege that his dismissal was in violation of the collective bargaining agreement. *See Gibson v. D.C. Pub. Empl. Rels. Bd.*, 785 A.2d 1238, 1243 (D.C. 2001) ("judgmental acts of discretion in the handling of a grievance, including the decision to arbitrate, do not constitute the requisite arbitrary, discriminatory, or bad faith element of such a violation") (citation omitted).

Mr. Powell's filing here is much like *Gibson*. In *Gibson*, 785 A.2d at 1242, the court "agree[d] with PERB's conclusion that [Ms. Gibson] failed to state a claim against her union." *Id.* In this regard, "[Complainant]'s complaint, even if accepted as true, alleges only that the union did not properly grieve her termination. Such an allegation cannot be construed as a claim of an unfair labor practice." *Id.* Similarly, Mr. Powell's complaint here alleges that the WTU refused to represent him at a fitness for duty exam, or to provide him alternative counsel when it had already provided him with competent counsel in a criminal case-- all equally discretionary, judgmental acts, which do not rise to the level of an Unfair Labor Practice. *Id.* In fact, representation in a criminal manner is not a part of WTU's duty of fair representation but rather was done as a courtesy service to its member.

Furthermore, with respect to the individual WTU Respondents, Nathan Saunders, Charles Moore, Candi Peterson, and Clay White, Complainant fails to allege sufficient conduct by any of them that, if true, would constitute an unfair labor practice. For these reasons, Complainant's Complaint must be dismissed in its entirety with prejudice.

C. Complainant's Additional Claims Cannot Be Heard By the Board³

The Complainant alleges numerous other wrongs that fall outside of the Board's jurisdiction (*i.e.*, fraud, neglect, blackmail, and violation of the Complainant's 5th and 14th amendment rights). However, claims of this sort are not unfair fair labor practices. Therefore, these claims should be dismissed as falling outside the jurisdiction of the Board in connection with Complainant's unfair labor practices complaint: *See* D. C. Code §§ 1-617.02, 1-617.04.

D. Complainant's Constitutional Claims Fail Against WTU As WTU Is Not A "State Actor."⁴

Complainant's complaint contains allegations that his 14th and 5th amendment rights were violated. Such claims may only be brought against a "state actor." *Simms v. Dist. of Columbia*, 699 F. Supp. 2d 217, 224 (D.D.C. 2010). Complainant has not alleged that WTU is a "state actor." A similar situation arose in *McManus*, and the court held that Complainants' failure to allege state actor status was a sufficient basis upon which to dismiss the claims: An individual alleging a violation of Section 1983 must demonstrate that the alleged deprivation of constitutional rights was committed by a person or entity acting under color of state law. *McManus v. Dist. Of Columbia*, 530 F. Supp. 2d 46, 70-71 (D.D.C. 2007) (holding labor union was not properly alleged to be a state actor and therefore was an improper defendant). The instant Complaint contains the same fatal flaw, and makes only bald accusations of constitutional violation, but is devoid of any assertion of "state actor" status. There is *no* allegation or assertion that WTU or its agents are or were functioning as a "state actor." Devoid of this assertion, like in *McManus*, Complainant has failed to establish that any WTU Respondent is a proper defendant, and his claims must fail.

³ Alternatively, WTU Respondents' Third Affirmative Defense.

⁴ Alternatively, WTU Respondents' Fourth Affirmative Defense.

CONCLUSION

For the foregoing reasons, Complainant's claims against the WTU Respondents must be dismissed with prejudice. Complainant has failed to state a claim for which relief can be granted. Moreover, the Complainant has failed to demonstrate that his Complaint has been filed timely. Likewise, Complainant fails to state that any WTU Respondent is a state actor against whom liability for constitutional acts could be alleged, or that they were his employer. Even if the Court takes the Complainant's allegations as true, the allegations do not demonstrate that that WTU breached its duty to fairly represent him. For all these reasons, all claims in Complainant's complaint must be dismissed with prejudice.

ANSWER⁵

Alternatively, should the Board deny WTU Respondents' motion to dismiss, WTU Respondents answer the Complaint as follows:

1. With respect to paragraph 1, WTU denies that it refused to bargain collectively or in good faith and denies knowledge sufficient to answer the remainder of paragraph. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

2. WTU denies the allegations in paragraph 2 with respect to WTU and denies knowledge sufficient to answer the paragraph with respect to AFT. To the extent paragraph 2 contains legal conclusions, no response is necessary. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

⁵ Should the Board deny WTU Respondent's Motion to Dismiss, the grounds for said motion, as stated above, should alternatively be considered affirmative defenses to the Complaint.

3. WTU denies the allegations in paragraph 3 with respect to WTU and denies information sufficient to answer the allegations with respect to AFT. To the extent paragraph 3 contains legal conclusions, no response is necessary. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

4. WTU denies the allegations in paragraph 4 with respect to WTU and denies information sufficient to answer the allegations with respect to AFT. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

5. WTU denies the allegations in paragraph 5. To the extent paragraph 5 contains legal conclusions, no response is necessary. To the extent the allegations in paragraph 5 reference any statute or court document, the Board is respectfully referred to a true copy of the contents thereof. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

6. WTU denies the allegations in paragraph 6 except admits that a portion of Union fees, which are collected from member paychecks, are used to pay for legal fees incurred by it and its members. To the extent paragraph 6 contains legal conclusions, no response is necessary. To the extent the allegations in paragraph 6 reference any court opinion, the Board is respectfully referred to a true copy of the contents thereof. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

7. WTU denies the allegations in paragraph 7. To the extent paragraph 7 contains opinions and legal conclusions, no response is necessary. To the extent the allegations in paragraph 7 reference any court opinion, the Board is respectfully referred to a true copy of the contents thereof. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

8. WTU denies the allegations in paragraph 8 except denies knowledge sufficient to answer allegations regarding DCPS or "Administrator" conduct. To the extent paragraph 8 contains legal conclusions, no response is necessary. To the extent the allegations in paragraph 8 reference any court opinion or document, the Board is respectfully referred to a true copy of the contents thereof. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

9. WTU and Charles Moore deny the allegations in paragraph 9 except deny knowledge sufficient to answer the allegations concerning Harold Martin. To the extent paragraph 9 contains opinions and legal conclusions, no response is necessary. To the extent the allegations in paragraph 9 reference any court opinion, the Board is respectfully referred to a true copy of the contents thereof. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

10. WTU and Nathan Saunders deny knowledge sufficient to answer the allegations contained in paragraph 10. To the extent paragraph 10 contains opinions and legal conclusions, no response is necessary. To the extent the allegations in paragraph 10 reference any court opinion, the Board is respectfully referred to a true copy of the contents thereof. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

11. WTU and Charles Moore deny the allegations in paragraph 11 except Charles Moore admits that the Complainant communicated with Mr. Moore regarding leave, Mr. Moore told Mr. Powell that Traci Higgins could place him on enforced leave, and that Mr. Moore had a case like that in the past. To the extent the allegations therein reference any court opinion, the

Board is respectfully referred to a true copy of the contents thereof. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

12. WTU and Charles Moore deny the allegations in paragraph 12. To the extent the allegations therein reference any court opinion, the Board is respectfully referred to a true copy of the contents thereof. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

13. WTU denies the allegations in paragraph 13 concerning WTU and denies knowledge sufficient to answer all remaining allegations. To the extent the allegations therein reference any court opinion, the Board is respectfully referred to a true copy of the contents thereof. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

14. WTU denies the allegations in paragraph 14 concerning WTU except that it admits it is the Collective Bargaining Unit with DCPS. WTU denies knowledge sufficient to answer all remaining allegations. To the extent paragraph 14 contains opinions and legal conclusions, no response is necessary. To the extent the allegations therein reference any court opinion, the Board is respectfully referred to a true copy of the contents thereof. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

15. WTU Respondents deny knowledge sufficient to answer the allegations contained in paragraph 15.

16. WTU and Charles Moore deny the allegations in paragraph 16 except Charles Moore admits that he did organize a meeting with DCPS Security for the Complainant to give a statement regarding the criminal case. To the extent the allegations therein reference any court

opinion, the Board is respectfully referred to a true copy of the contents thereof. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

17. WTU and Candi Peterson deny the allegations in paragraph 17 except allegations concerning DCPS or Mr. Ali, which they deny knowledge sufficient to answer. To the extent the allegations therein reference any statute or court opinion, the Board is respectfully referred to a true copy of the contents thereof. To the extent paragraph 17 contains a legal conclusion or a prayer for relief, no response is necessary. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

18. The unnumbered paragraph on page 7 of the Complaint contains a prayer for relief or a legal conclusion and therefore no response is necessary. To the extent a response is necessary, WTU Respondents deny the allegations in their entirety.

19. WTU Respondents deny the allegations contained in paragraph 1 on page 7 of the Complaint regarding failure to support or represent Complainant and deny knowledge sufficient to answer the remaining allegations contained in the paragraph. To the extent paragraph 18 contains a legal conclusion or a prayer for relief, no response is necessary.

20. WTU denies the allegations contained in paragraph 2 on pages 7 and 8 of the Complaint regarding failure to support or represent Complainant and denies knowledge sufficient to answer the remaining allegations contained in the paragraph. To the extent paragraph 19 contain a legal conclusion or a prayer for relief, no response is necessary. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

21. WTU denies the allegations contained in paragraph 3 on page 8 of the Complaint regarding failure to support or represent Complainant and denies knowledge sufficient to answer the remaining allegations contained in the paragraph. To the extent paragraph 19 contain a legal conclusion or a prayer for relief, no response is necessary. The remaining WTU Respondents deny knowledge sufficient to answer the allegations contained in this paragraph.

22. Paragraph 4 on page 8 of the Complaint contains legal conclusions and a prayer for relief for which no response is necessary. To the extent that a response is required, WTU Respondents deny the allegations in their entirety.

23. Paragraph 5 on page 8 of the Complaint contains a prayer for relief for which no response is necessary. To the extent that a response is required, WTU Respondents deny the allegations in their entirety.

24. Paragraph 6 on pages 8 and 9 of the Complaint contains legal conclusions and a prayer for relief for which no response is necessary. To the extent that a response is required, WTU Respondents deny the allegations in their entirety.

25. The remaining allegations on page 9 of the Complaint constitute legal conclusions and prayers for relief for which no response is necessary. To the extent that a response is required, WTU Respondents deny the allegations in their entirety.

Dated : May 13, 2011

Respectfully submitted,

JOSEPH, GREENWALD & LAAKE, P.A.



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*Counsel for Defendants Washington
Teachers' Union, Nathan Saunders, Clay
White, Charles Moore, and Candi Peterson*

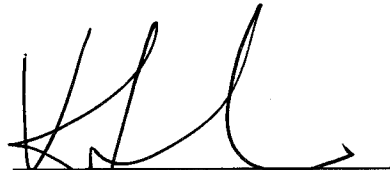
CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May, 2011, a true and accurate copy of the foregoing was served via certified first class mail and facsimile to:

Daniel J. McNeil, Esq.
555 New Jersey Ave., NW
Washington, D.C. 20001
Counsel for American Federation of Teachers, AFL-CIO, Randi Weingarten, and Al Squire

And served via certified first class mail on:

Theodore E. Powell
308 Hodder Lane
Highland Springs, VA 23075
Pro Se Plaintiff


Veronica D. Jackson

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

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THEODORE E. POWELL,

Complainant,

v.

**AMERICAN FEDERATION OF TEACHERS,
AFL-CIO,**

Respondent.

PERB Case No 11-U-26



**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OF RESPONDENT
AMERICAN FEDERATION OF TEACHERS**

Pursuant to Rule 553.1 of the Public Employees Relations Board of the District of Columbia ("PERB") the Respondent, the American Federation of Teachers, AFL-CIO ("AFT"), by and through its attorney, moves to dismiss the above captioned Complaint filed by Complainant ("Mr. Powell") for (1) failure to state a claim against the AFT upon which relief can be granted and (2) failure to allege facts under which the AFT could be found liable.¹

I. INTRODUCTION

The crux of Mr. Powell's complaint is dissatisfaction with the legal representation he received from the Washington Teachers Union ("WTU") related to issues he was having at work in his employment as a teacher with the District of Columbia Public Schools ("DCPS"). In his complaint, Mr. Powell states that he was assaulted by students at his worksite, Woodson High

¹ The AFT is filing this Motion to Dismiss in order to preserve our rights. We received the PERB's response to Mr. Powell's Complaint April 11, 2011 and Mr. Powell's Complaint by U.S. Mail on Wednesday, April 13, 2011. Neither document included a directive to reply.

School, and that both school administrators and the WTU failed to help him resolve the situation. Complaint at p. 3, ¶ 7. Mr. Powell states that, “the WTU failed to get immediate care for the Complainant in these matters.” Complaint at p. 4, ¶ 8. Mr. Powell states that he “had to eliminate the WTU’s Lawyer to get a fair and honest representation in the court system.” Complaint, p. 3, ¶ 6. He later claimed that he asked for WTU to provide him with a substitute attorney in a criminal proceeding, but that WTU refused. Complaint at p. 4, ¶ 9. Mr. Powell asserts that the WTU failed to send a union representative to accompany him during his fitness for duty exam, a test administered by DCPC to determine whether DCPS employees are mentally and emotionally capable of fulfilling their work related duties. Complaint p. 5, ¶ 12. Finally, Mr. Powell claims that “the WTU has failed again to perform its responsibilities as the main collective bargaining unit with DCPS.” Complaint at p. 6, ¶ 17.”

Complainant, has framed this action as a “complaint for breach of contract, employment discrimination and misrepresentation” and “violations of Constitutional Rights, conspiracy and Misconduct.” Complaint at p. 1. As Complainant acknowledges by citation to U.S. Supreme Court precedent, the allegations describe a claim of breach of the duty of fair representation. Steele v. Louisville & Nashville Railroad, 323 U.S. 192 (1944); Ford Motor Co. v. Huffman, 345 U.S. 330 (1953); Vaca v. Sipes, 386 U.S. 171 (1967). The duty of fair representation (“DFR”) is derived from the union’s status as exclusive bargaining agent for the employees. Under this doctrine, the exclusive agent’s statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. Id. at 177. Unions are granted a wide degree of discretion in the representation of its members and are not required to provide representation in every dispute.

Vaca, 386 U.S. at 191; Electrical Workers v. Foust, 442 U.S. 42 (1979). The union's duty to one of its members is not breached unless its "conduct ... is arbitrary, discriminatory, or in bad faith" Gibson v. Dist. of Columbia Pub. Employee Relations Bd., 785 A.2d 1238, 1243 (D.C. 2001) citing Vaca, 386 U.S. at 190.

II. STANDARD OF REVIEW

The Complainant's base allegations against the AFT and its relationship to the WTU are insufficient to state a claim against the AFT. The Complainant does not allege any facts that, if accepted as true, with all reasonable inferences drawn in the Complainant's favor, describe conduct indicating that the AFT has committed an unfair labor practice or breached a duty of fair representation. See W.C. & A.N. Miller Cos. v. United States, 963 F. Supp. 1231, 1235 (D.D.C. 1997) (describing a court's duty to consider factual allegations when considering a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), citing Maljack Productions, Inc. v. Motion Picture Ass'n of Am., Inc., 52 F. 3d 373, 375 (D.C. Cir. 1995)).

III. ARGUMENT

A. AFT IS NOT THE EXCLUSIVE REPRESENTATIVE OF THE BARGAINING UNIT AND THUS COMPLAINANT'S CLAIMS MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Complainant's only allegations against AFT are (1) that WTU told Complainant that he could hire his own attorney if he did not like the attorney provided by WTU, which statement was "approved" by AFT (Complaint at p. 4, ¶ 9); (2) that AFT fired Complainant (Complaint at p. 6, ¶ 14); and (3) that an AFT employee allegedly hung up the phone on the Complainant (Complaint at p. 6, ¶ 15).² Even if these assertions are true, they do not state a DFR claim

² Neither the WTU nor the AFT ever employed Mr. Powell and therefore did not possess the capacity to terminate him.

against AFT because AFT **is not** a party to the collective bargaining agreement and **is not** the exclusive bargaining representative; Vaca v. Sipes, 386 U.S. 171; Baker v. Newspaper & Graphic Communications Union, Local 6, 628 F.2d 156, 165 (D.C. Cir. 1980) (holding that where International was neither the bargaining representative nor a party to the collective bargaining agreement, no basis for finding International responsible for duties owed by the Local). Complainant's complaint against AFT must be dismissed.

Public education has always been a local matter in this country. Locally-elected authorities govern school districts and have broad discretion in setting policies which shape how students learn and teachers work. The agreements reached between school districts and their employees vary greatly. These collective bargaining agreements identify the local, not the AFT, as the employees' representative. The AFT does not typically review or sign onto such agreements and it exercises no control over the enforcement and implementation of the agreements. Consistent with the role of a party to a contract, the local administers the collective bargaining agreement.

The WTU is an autonomous organization that makes its own decisions regarding personnel, collective bargaining agreements and representation of its members. Significantly, each local has its own constitution and bylaws that governs the relationship between the members and the local.³ Additionally, each local has its own employer identification number from the Internal Revenue Service and legally functions as an autonomous employer for purposes of state and federal labor and employment law. In this functional context, each local, including the WTU, manages its own affairs.

³ The attorney provided WTU to Mr. Powell for his criminal proceeding is a benefit of WTU membership; AFT does not have any role in the administration of that program.

The AFT does provide certain services to the members, but it does so in a limited and defined capacity; to do otherwise would intrude on our locals' autonomy and violate the AFT's constitution. The AFT provides local affiliates with: assistance in organizing new members; representation in Congress and before Executive Branch agencies on education policy issues and related matters; assistance in offering in professional development training for educators; collective bargaining assistance only when requested by a local; and financial assistance for legal cases that are brought by AFT locals.

The AFT does not owe Mr. Powell a duty of fair representation because AFT is not the exclusive representative of the bargaining unit. The AFT is neither a party to collective bargaining agreements between the WTU and DCPS, nor does the AFT enforce this collective bargaining agreement. Since AFT does not possess the authority or responsibility to enforce the WTU/DCPS bargaining agreement, AFT has no obligation to represent Mr. Powell in grievance procedures with DCPS or other matters related to his employment. Rather, WTU has the statutory authority and responsibility to perform these functions. Accordingly, Complainant does not have a claim against AFT and the Complaint should be dismissed.

B. COMPLAINANT'S DFR CLAIM IS DEFICIENT BECAUSE HE DOES NOT ALLEGE UNLAWFUL TERMINATION AND ARBITRARY TREATMENT.

In order for Complainant to establish that WTU breached its duty of fair representation, Mr. Powell must demonstrate that his termination by DCPS violated the collective bargaining agreement **and** that WTU treated him in an arbitrary or discriminatory manner or in bad faith. Jordan v. Washington Metro. Area Transit Auth., 548 A.2d 792, 797-98 (D.C. 1988) citing Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151, 164-165 (1983); Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 570-571 (1976). Complainant has not presented any

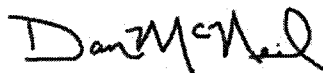
evidence that he was wrongfully terminated, and thus, his DFR claim against both AFT and WTU is not proper.⁴

III. CONCLUSION

Based on the foregoing reasons, Respondent AFT respectfully requests that the Complainant's Complaint be dismissed for: (1) for failure to state a claim against the AFT upon which relief can be granted; (2) failure to allege facts under which the AFT could be found liable; and (3) lack of subject matter jurisdiction.

Dated: April 29, 2011

Respectfully submitted,



Daniel J. McNeil, D.C. Bar No. 455712
American Federation of Teachers, AFL-CIO
555 New Jersey Avenue, N.W.
Washington, D.C. 20001
Telephone: (202)393-7472
Fax: (202)393-6385
Email: dmcneil@aft.org

⁴ A union's duty of fair representation does not extend to criminal cases.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

THEODORE E. POWELL,

Complainant,

v.

**AMERICAN FEDERATION OF TEACHERS,
AFL-CIO,**

Respondent.

kwiktag®

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PERB Case No 11-U-26

ORDER

Upon consideration of the Motion to Dismiss submitted by Respondent American Federation of Teachers, Complainant's allegations, and the Board having concluded that Complainant has failed to state a claim upon which relief may be granted, and Respondent is not a proper party to this action, it is by the Board, pursuant to the Rules governing this Board, this ____ day of _____, 2011.

ORDERED,

1. that Respondent's Motion to Dismiss is hereby granted; and
2. Complainant's Unfair Labor Practices claim against Respondent American Federation of Teachers is hereby dismissed.

Dated: _____

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

THEODORE E. POWELL,

Complainant,

v.

**AMERICAN FEDERATION OF TEACHERS,
AFL-CIO,**

Respondent.



PERB Case No 11-U-26

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Respondent's Motion to Dismiss, Memorandum and proposed Order was served upon the Complainant and the counsel for the Respondents, via first class mail, postage prepaid, to the following addresses, on this 29th day of April, 2011:

Theodore E. Powell
308 Hodder Lane
Highland Spring, VA
23075

Veronica D. Jackson, Esq.
Joseph, Greenwald & Laake, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770

Attorney for the Washington Teachers' Union, Nathan Saunders, Clay White, Charles Moore, and Candi Peterson

Daniel J. McNeil, Attorney for the AFT

**Joseph
Greenwald
& Laake**

Attorneys at Law
Joseph, Greenwald & Laake, P.A.
6404 Ivy Lane · Suite 400
Greenbelt, Maryland 20770
(301) 220-2200 · Fax (301) 220-1214
www.jgllaw.com

FAX TRANSMISSION

To: 2027279116
From: Gina Chandler
Subject: Theodore E. Powell v. American Federation of Teachers, Washington Teachers' Union, et al., PERB Case No. 11-U-26
Date: Friday, May 13, 2011

Message: **Attention: Blanca Torres, Acting Executive Director, PERB
(202) 727-9116**

CC: Randi Weingarten & Al Squire, AFT

**c/o Dan McNeil, Associate Director AFT Legal
Department (202) 393-6305**

From: Veronica D. Jackson, Esquire

Operator: Gina L. Chandler

PAGES: 12+Cover

*If you do not receive all pages of this transmission and/or are not the intended recipient. Please call 240-553-1172.
Thank you*

PUBLIC EMPLOYEE RELATION BOARD

District of Columbia

717 14th N.W. Suite 1150

Washington D.C. 20005

March 9, 2011

Theodore E. Powell

308 Hodder Lane

Highland Springs, VA. 23075

Plaintiff

V.

Case No: 11-V-26

American Federation of Teachers (7)

Randi Weingarten AFT (1)

Al Squire AFT (2)

555 New Jersey Ave N.W.

Washington, D C 20001

Washington Teachers Union (8)

Nathan Saunders WTU (3)

Clay White WTU (4)

Charles Moore WTU (5)

Mrs. Candi Peterson WTU (6)

1825 K Street, N.W. Suite# 1050

Washington, D.C. 20006

Defendants



Complaint

Comes Now, Your Plaintiff, Theodore E. Powell, Pro 'Se and hereby files this complaint for **Black Mailing, breach of contract, employment discrimination, misrepresentation and unfair labor practices**. Jurisdiction in this case is based on the allegations giving rise to this **complaint occurred in the District of Columbia**. The Plaintiff is a **resident of Virginia**. The Defendants reside or do business in the **District of Columbia**. The statute of limitation is within designated time and there is no Immunity issue. This action is brought pursuant to violations of Title VII of the Civil Rights of 1964 as amend. This complaint shows cause and damages to the Plaintiff as the of result extrinsic fraud, malpractice medical and deceit used to favor opinions to violate the Plaintiff's 14th and 5th amendment rights, which caused pain, mental and emotional suffering. These violations damaged the Plaintiff's Civil Rights, violated contract law and Terminated the Plaintiff from his position and blacked balled the Plaintiff from teaching in the District of Columbia and Virginia by use of unspoken words. The Plaintiff is stating violations of

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D.C. PERB
2011 MAR -9 AM 8:55

Constitutional Rights, **conspiracy and Misconduct** of their positions as the basis, as is herein after stated and set forth as basis therefore:

1. The Plaintiff states AFT and WTU are refusing to bargain collectively in good faith with the exclusive representative Traci Higgins of DCPS, on 1620.15 of the DC code and termination on a fraudulent report. The Plaintiff's worker compensation claim number is 301-011421-140-001. The Plaintiff was injured on job; Worker Compensation can have their doctor examine me to see what is my status. If okay send me back to work, if not, treat me and retire me under worker compensation.
2. The Plaintiff claims **Blackmail** that WTU is interfering with, restraining, or coercing any employee or the District in the exercise of the right guaranteed by this subchapter. The violation of 14th, 5th amendment, worker compensation, representation in doing Fitness for duty and Due Process rights. The WTU and AFT are not trying to exhaust their administrative methods but are conspiring with the DCPS.
3. The Plaintiff claims that AFT and WTU is causing or attempting to cause the District to discriminate against an employee in violation of DC codes 1620.15 and 1-617.06 by injuries on the job, the 14th, 5th, Due Process, worker compensation, Teacher Evaluation Fraud, black mailing and termination.
4. The Plaintiff claims the AFT and WTU has discharged or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition or given any information or testimony under this subchapter. The Plaintiff is fired and will not receive any support. The filing of Step II grievance with no inattention of following through on the grievance work or resolving the Plaintiff issues.
5. The Plaintiff states misrepresentation by the Washington Teacher Union, they have provided no enforcement for this teacher's rights, under the established guidelines as the Collective Bargaining Unit for DCPS. There is "**no freedom of choice in representation**" or explanation of why the ostentatious WTU have been insubordinate in their operation to restore the Plaintiff back to his position and back pay. This is stated in the DC code 1620.15 of enforce leave. The Plaintiff was proven innocent in a court of law, on September 29th 2010. The WTU's grievance procedure and dialogue with DCPS were unproductive and invisible as they have failed in their responsibilities. Making this Law suit imperative for the Plaintiff to survive and get WTU to do their jobs. **Steele v. Louisville & Nashville R. Co.(cb7-1)**, this Court has emphatically and repeatedly ruled that an exclusive bargaining agent under the Railway Labor Act is obligated to

represent all employees in the bargaining unit fairly and without discrimination because of race and has held that the courts have power to protect employees against such invidious discrimination. It charged that such discrimination constituted a violation of petitioners' right under the Railway Labor Act to fair representation from their bargaining agent. And it concluded by asking for relief in the nature of declaratory judgment, injunction and damages.

6. The Plaintiff states that monies from the Plaintiff's checks are deducted for **(the Ades's law firm)** for representation in the WTU's teachers legal matters. The Plaintiff had to eliminate the WTU's Lawyer to get a fair and honest representation in the court system. The Plaintiff would have convicted himself from the poor representation, conspiracy and deceitful ways of WTU's lawyer who misrepresented the Plaintiff's 5th amendment rights, Due Process and right to have a speedy trial. **Vaca v. Sipes (cb9-1)** held that the duty is breached only when the union's conduct towards a bargaining unit member is arbitrary, discriminatory, or in bad faith.
7. The Plaintiff states that the WTU failed to establish their support and representation when the Plaintiff was being abused, molested and almost killed at Woodson High School, where the Plaintiff was assaulted over seven times by students. The administration just turned their heads and MPD stated we do not believe the Plaintiff. This is unbelievable and misconduct for their authoritarian positions under the 14th amendment. The WTU was negligent in its efforts to get involved and implement a strong safe plan for success, as a part of the Collective Bargaining Agreement or to visit the school to investigate and see first and the Plaintiff's concerns. **Ford Motor Co. v. Huffman (cb7-19, p[11])** The bargaining representative's duty not to draw 'irrelevant and invidious' distinctions among those it represents does not come to an abrupt end, as the respondents seem to contend, with the making of an agreement between union and employer. Collective bargaining is a continuing process. Among other things, it involves day-to-day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by contract.
8. The Plaintiff states that he is suffering from two injuries that are documented by reports from Medical Specialist Doctors and Licensed Professional Counselor from injuries received from assaults on the job. There is nerve damages in the Plaintiff's feet and Post Traumatic Syndrome Disorders with case number of **301-011421-140-001** and DCPS told worker compensation to ignore. All Administrators were insubordinate to identify the severity of not reporting. The WTU failed to get immediate care for the Plaintiff in these matters. The Collective Bargaining Unit, for

a teacher who was injured on the job by maltreatment and gross negligence has failed again. Worker Compensation could send the Plaintiff to their doctor for treatment and determine whether to send me for treatment or back to work. The Crime Victim's Program of Superior Court was only organization who gave support to the Plaintiff. Conley v. Gibson (cb7-14, p[9]) "By virtue of this contractually derived status as the exclusive enforcer of the collective agreement, the union assumes a heavy responsibility to exercise its control on behalf of, rather than against the individual employee. The collective agreement creates rights in the individual employee which are enforceable under section 301. In the absence of a union controlled grievance procedure the individual can sue and enforce his rights in his own behalf. The effect of the contractual provision giving the union exclusive control over the grievance procedure is to deprive the individual of his ability to enforce the contract on his own behalf. The union, having deprived the individual of his ability to enforce his rights, has a special obligation to act on his behalf."

9. The Plaintiff states during his criminal case he asked the WTU for better Lawyer (not Harold Martin) because he was violating the Plaintiff's civil, 5th and 14th amendments rights. Harold Martin was compelling to school's MPD interest. There was a variance of interest as Harold Martin was intimidating the Plaintiff to take a plea in court and ran the Plaintiff's witness away. The WTU's Charles Moore statement which was approved by the WTU and AFT, "that if you do not like our lawyer then go get your own". The plaintiff did ask for a new lawyer but WTU refused to help me in this matter. Conley v. Gibson (cb7-14, p [9])
10. The Plaintiff states that the Harold Martin was prejudicial to the Plaintiff's case and ask the WTU to remove him by email to the president of the union. Harold Martin deliberately corrupted and created a hostile environment .Harold Martin destroyed communication efforts with the new Public Defender because what was told about the Plaintiff. The second public defender wanted the Plaintiff to take a plea in the Mental Health Court and suggested that The Plaintiff do not tell the truth and brings his medicine to show the court that the Plaintiff is sick. This goes back to the MPD's fraudulent statement on the arrest of the Plaintiff. When the WTU did not provide support and representation to the Plaintiff. The Plaintiff 5th amendment rights were being abuse by this prejudice statement by the MPD. The Plaintiff was in a room crying and talking on the phone and nobody, was on it and the Plaintiff was out of his mind. This did not happen but, the statement it is being used against Plaintiff then and now. This is defamation

of character by the MPD and compelled by Harold Martin to the New Public Defenders was an exploitation association. Conley v. Gibson (cb7-14, p[9])

11. The Plaintiff states that Charles Moore of WTU is advising DCPS's Traci Higgins against the Plaintiff, after an argument to remove Harold Martin as the Plaintiff's lawyer in the criminal case. The Plaintiff was placed on paid Administrative on December 10, 2009 and Traci Higgins name was the first name on the list be cc. Enforced leave should have happen on the December the 16,2009. Traci Higgins knew nothing about Enforce Leave as Traci Higgins made four errors in trying to make it work for WTU. The Plaintiff communicated with Charles Moore about Enforce Leave and he stated that Traci Higgins could do that .Charles Moore admitted that he had a case like that before. Charles Moore supported Traci Higgins to conspire against the Plaintiff; this is the payback for challenging WTU. Steele v. Louisville & Nashville R.R. (cb7-4,p[11])• "...the duty of fair representation has stood as a bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law
12. The Plaintiff states that he asked the WTU for support and a representative to go with the Plaintiff for Fitness for Duty exam, the Plaintiff is aware that he could have representation during this process, but the WTU refused to support and represent. Now, Traci Higgins has conspired with the Malpracticing Dr. Webb to use his bogus empty scratch legal pad to terminate the Plaintiff under false pretense with Charles Moore support. The Plaintiff did not have a Due Process hearing nor the right to have Dr. Webb cross examine by the Plaintiff's lawyer. WTU did not send the Plaintiff a copy of Dr. Webb's report after signing a paper to release the information to WTU and have it sent to the Plaintiff. Conley v. Gibson (cb7-14, p[9])
13. The Plaintiff states that he did attend the Fitness for Duty with Doctor Webb he is not an independent medical examiner and I had no choice, even though he is neither psychologist nor a mental health professional .His specialty is emergency medicine and surgery. He is out of his area of his expertise. This is gross negligence to provide false information to damage the Plaintiff as a patient in his care The Plaintiff was damaged from the WTU lack of support and representation. DCPS and Traci Higgins told Doctor Webb to go to my home this should not be allowed. Dr. Webb's report is Traci Higgins means of termination. He provided false information to the **Commonwealth of Virginia Department of Health Professional** and the District of Columbia Government. Doctor Webb stated that the Plaintiff got his name off a list of doctors.

In fact this is a wrongful termination and DCPS should have recommended an independent medical examiner by the Plaintiff as stated in their procedures. Dr. Webb should have declined from committing Fraud and taking the money from DCPS and Traci Higgins. Higgins knowingly knew that he was not a qualified psychologist to do mental health evaluations but she conspired to do fraud to castigate the Plaintiff. The Plaintiff was not to obtain a passable fitness for duty report by Dr. Webb because of the court case. **Executive Director Mrs. Reynolds-Cane of Commonwealth of Virginia Department of Health Professional stated on Wednesday, December 15th at 2:41 pm, 2010 that this is Civil Malpractice by Dr. Arthur Webb. Steele v. Louisville & Nashville R. Co.(cb7-1),**

14. The Plaintiff states he was fired by Clay White which violates the contract by, WTU and AFT and he stated I will not get any support and representation from them, but The Plaintiff still have paid them money as long as the Plaintiff is a teacher in the system. Since the WTU is the Collective Bargaining Unit for teachers with DCPS the Plaintiff would be blocked out, until the WTU decide when and how long their want to drag these issues out. This is why the law suit is imperative because of extrinsic fraud and bias. **Conley v. Gibson (cb7-14, p[9])**
15. The Plaintiff states that he contacted the AFT's Al Squire for support and representation on these issues and they were deceitful in their methods and approach to help and hung up their phones on the Plaintiff. **Steele v. Louisville & Nashville R. Co.(cb7-1),**
16. The Plaintiff states that Charles Moore did organize a meeting with DCPS security for the Plaintiff give a statement on the criminal case. It was not cleared by Charles Moore through Traci Higgins `s office and The Plaintiff would have been arrested for coming on DCPS property. Charles Moore did not come to that meeting at DCPS security's office as a support and representative of the WTU. Turning his back on the Plaintiff as if the Plaintiff was acting on his own. **Conley v. Gibson (cb7-14, p[9])**
17. The Plaintiff states that the WTU did not support and represent the Plaintiff on the Enforce Leave Policy when the Plaintiff was found to be innocent in a court of law. The code of District of Columbia 1620.15 states that all lost pay, leave and administrative action (removed from teaching position) shall be restored retroactively. The WTU has failed again to perform its responsibilities as the main collective bargaining unit with DCPS. Candi Peterson stated on December 17, 2010, that we might be able to do something in February, that is three months away and Plaintiff will be in Foreclosure. The Back pay is owed now by **District of Columbia Codes 13-3303 and 1620.15** and that's the law. The WTU sent out memo on December 17, 2010

stating that one of elementary school teacher s pay were short of hours and special considerations were made for them by WTU and DCPS to get these people paid for the Christmas Holidays and they could pick up their money as late as Friday at 11 pm and the next day on Saturday. This is act of defiance by the WTU to not support and represent the Plaintiff as money is owed to the Plaintiff has created emotional pain and suffering on the Plaintiff and his family members on these holidays times. The WTU and DCPS are conspiring to punish the Plaintiff an innocent man .On December 7 ,2010 Mr. Ali from Employment Commission stated the commission received a statement that the Plaintiff was still apart of school district as of December 22,2010 and yet is not getting paid. **Bowen v. United States Postal Service (cb9-34)** held that damages must be apportioned between the employer and the union: the union is liable for any **increase** in lost pay due to its breach; employer should be left in position it would have been in had union not breached the duty of fair representation.

Plaintiff states a claim: The Plaintiff claims that is owe in compensatory damages from his contract in the amount 40 thousand Dollars or more before taxes plus pain , suffering ,job loss and mental anguish.

1. The Plaintiff claims WTU did not support and represent when he was injured on the job and the principal at Woodson High refused to call the report to workmen`s compensation to get immediate care for the Plaintiff. The Plaintiff became neglected which cause pain and suffering in the Plaintiff to perform his duties as a physical education teacher. The damaged to the plaintiff`s feet made it hard to stand up and be active with the students. There is nerve damage and the Plaintiff is still receiving physical therapy for these injuries that happen on the job. The Plaintiff has a loss of feelings in his feet, toes and has pain in his legs. The Plaintiff **demands judgment against the Defendant WTU and Agents in the sum of 5.2 million dollars, neglect and being crippling in later life without support,(with interest and cost)**
2. The Plaintiff claims WTU did not support and represent when he was injured on the job from the many assaults by students, misconduct by MPD by not reporting these assaults, and the administration just turning their heads in non-recognition that these things were happening. This is neglect and a violation of the 14th amendment. The Plaintiff states that he has been traumatized and diagnose with Post Traumatic Syndrome from the assaults, injuries and misconduct of administrative staff. This was documented to the WTU, DCPS, Superior Court and Crime Victims of Superior Court. The **Plaintiff demands judgment against the Defendant**

WTU and agents in the sum of 5.4 million dollars for neglect and of the Post Traumatic Syndrome, from injuries and misconduct on the job, (with interest and cost) The Plaintiff see himself like those soldiers coming from the war who claim Post Traumatic Syndrome how many of them return to live a normal life without anger, stress, depression and label by society. There is not a magic pill or a hocus pocus to give these solders a better life. This Plaintiff has it also from being assaulted and abused on the job.

3. The Plaintiff claims WTU did not support and represent his 5th amendment rights and Due Process by not providing the proper support and representation needed in the Plaintiff's criminal and civil matters. The Plaintiff was told to get his own lawyer which caused the Plaintiff and his family emotional pain, suffering and could have been jailed for six months of the Plaintiff's life destroying all. Later the WTU Clay White fired the Plaintiff from the WTU and AFT and the Plaintiff had no support and representation now. **The Plaintiff demands judgment against the Defendant WTU and agents (Clay white and Charles Moore) in the sum for 6.7 million dollars with interest and cost. The Plaintiff is demanding punitive damages on Charles Moore, Candi Peterson, Nathan Saunders and Clay White in the sum of 3 million dollars each for abuse and misconduct of their positions.**
4. The Plaintiff claims and demands judgment against the Defendants WTU **for the Plaintiff's back salary, leave and Medical benefits** for not returning the Plaintiff to his teaching position as stated in the **Code of the District of Columbia 1620.15**. It was personal attack on the Plaintiff, a willful and knowingly disregards to deceive and the abuse of their powerful position. **Plaintiff is demanding judgment against Defendant WTU and agents Clay White and Charles Moore) in the sum of 6 million dollars in punitive damages for wrongful termination and abuse of power.**
5. The Plaintiff claims and demands judgment against defendant AFT Randi Weingarten and Al Squire in the sum of 6 million dollars in punitive damages in that this will never happen to another teacher in this DCPS District and United States. There have been a lot of teachers who has been ignored and shorted by these Unions. Just because the WTU has changed the personality the odor is still remains there.
6. The Plaintiff is asking the court to retain jurisdiction over this action to ensure full compliance with the order of this court and law on this action is based and compel the WTU to support and represent all teachers to fullest degree with dedication and appreciation (including a

requirement that the Defendants file such reports as the court deems necessary to evaluation such compliance with the Impact evaluation process and teacher terminations and riffs.)

Wherefore, The Plaintiff respectfully requests this Honorable Court to grant the following relief:

1. Order Defendant to reinstate the Plaintiff to his former position retroactive to Woodson High or another High School.

2. Order the Defendant to pay compensatory damages to the pay for loss of salary; court cost and other related legal expenses, restoration of all rights, benefits and other entitlement of any kind or nature that would have accrued to the plaintiff ,but for Defendant's illegal and improper actions.

3. Order relief in the nature of declaratory judgment, injunction, punitive and damages

Relief can be made: By returning the Plaintiff to another teaching position until the end of school year of 2011 and paying all back pay and leave. Then retire the Plaintiff with full 100% retirement benefits and 8 million dollars in cash.



Theodore E. Powell
804-306-8683 (cell)
804-328-2782

_____, being first duly sworn on oath deposes and say that the forgoing is a just and true statement of the amount owing by defendant to the plaintiff, exclusive of set-off and just grounds of defense.

Theodore E. Powell

DIRECTIVE

DIRECTIVE

District of Columbia Public Schools
825 North Capitol Street, N.E., Washington, D.C. 20002

Originating Office: Human Resource Management Office of Employee Services	Approved: <i>[Signature]</i>
Subject: Fitness-for-Duty Examinations	Reference:
	Date: <i>10/16/01</i>
	Rescission: 650.13 (dated October 23, 1985)

- Authority:
1. D.C. Law 2-139, Title XX, Section 2007
Section 1-621.7, D.C. Code
 2. Rules of the Board of Education, Chapter 6, Section 621.2
Codified at 5 DCMR 1401.2

A medical examination of an employee to determine the fitness to discharge the duties & responsibilities of his/her position will be conducted at the request of the assistant superintendent or supervisor after consultation with the Office of Employee Services.

When to Request Fitness-for-Duty Examination

A Fitness-for-Duty examination may be requested when:

- a.) there are indications that the employee's performance or adjustment in his/her position is affected adversely by ill health (physical or mental) and there is a real question as to whether the degree of ill health prevents the employee from meeting the requirements of the position. (Suspected drug or alcohol abuse is considered to be a health problem).
- b.) there is a question of possible hazard to the employee or others if the employee is maintained in his/her present position.

Procedures

1. When one or both of the above conditions exist, the assistant superintendent or supervisor should complete a "Fitness-for-Duty Request Form" and submit it to the Office of Employee Services.
2. The Office of Employee Services will review the request and determine if a Fitness for Duty Exam should be scheduled.



Arthur Webb, M.D.
Occupational Medicine

October 28, 2010

Traci L Higgins
Director, Labor Mgmt & Employee Relations
1200 First Street, NE
Washington, DC 20002

2010 OCT 29 AM 7:55

DCPS/OHR

Dear Traci:

Re: Theodore Powell

I did attempt to evaluate Mr. Theodore Powell to determine his Fitness-for-Duty as you requested back on March 17, 2010. He was seen in my office on October 26, 2010. At the outset, he made it very clear he had no interest in being evaluated. As a result of his request the evaluation was terminated.

If any additional information is needed, please feel free to contact me.

Sincerely,



Arthur Webb, M.D.

3. If it is determined that a Fitness for Duty exam should be scheduled, the employee will be notified in writing to contact the independent medical examiner within 10 days to schedule an appointment.
4. Employees who are recommended for Fitness-for-Duty exams must sign a medical release form that allows the independent medical examiner to forward the results of the medical evaluation to DCPS. Failure to sign this medical release constitutes a violation of this directive.
5. Upon completion of the medical examination, the independent medical examiner will forward an evaluation report to the Office of Employee Services.
6. The Office of Employee Services will advise the assistant superintendent or supervisor and employee of the final disposition of the examination and coordinate subsequent actions, if required.
 - a) If the employee is found to be "medically fit" for duty, the employee returns to work.
 - b) If the employee is found to be "medically unfit" for duty, has (5) years of service, and does not elect to voluntarily submit an application for disability retirement, an involuntary disability retirement may be processed.
 - c) If the employee is found to be "medically unfit" for duty, has less than (5) years of service, and is not eligible for disability retirement, the employee may be terminated for lack of satisfactory performance or incompetency in his/her position.

◆◆◆◆◆◆◆◆

ATTACHMENT: Fitness-for-Duty Request Form

Subj: (no subject)
Date: 12/7/2010 1:13:22 A.M. Eastern Standard Time
From: Tp89@aol.com
To: kaya.henderson@dc.gov, mbowser@dccouncil.us, mbarry@dccouncil.us, nasaunders@aol.com,
asquire@aft.org
CC: lucyredwards@verizon.net, jdevita@devitalaw.com

12-7-10

Since my so called termination was 11-30 -10 and the enforced leave law states that all back pay is restored retroactively. So why is Traci Higgins discriminating again me. 12-3-10 was the next final check payday.

- 1620.14 An employee shall remain on enforced leave until such time as disciplinary action, in accordance with this chapter and taken as a result of the event that caused the administrative action, is effected, or a determination is made that no disciplinary action will be taken.
- 1620.15 If the basis for placing an employee on enforced leave pursuant to this section does not result in disciplinary action pursuant to the provisions of this chapter, any annual leave, compensatory time, or pay lost as a result of the administrative action shall be restored retroactively.

Final Paycheck laws

District of Columbia (D.C. Code § 32-1303)	Final check must be given on the next business day.	Final check must be given on the next scheduled payday, or within seven days, which occurs first.
--	---	---



Washington Teachers' Union

Local 6 of the American Federation of Teachers, AFL-CIO

George Parker
President

November 8, 2010

Kaya Henderson, Interim Chancellor
District of Columbia Public Schools
1200 First Street, NE, 12th Floor
Washington, DC 20002

Dear Chancellor Henderson:

The Washington Teachers' Union hereby invokes Step II of the grievance and arbitration procedure in accordance with Article VI of the Agreement between the Washington Teachers' Union and the District of Columbia Public Schools on behalf of Mr. Theodore Powell. Mr. Powell is assigned to Woodson SHS.

The grievance concerns the termination of Mr. Powell, effective November 30, 2010 for insubordination.

The Union files this grievance under Articles VI, VII, and other applicable Articles and DCMR(5). It is requested that the termination be rescinded, thereby restoring all lost salaries, benefits, and privileges of employment. In other words, the Union requests that Mr. Powell be made whole.

Please contact me at (202) 293-8624 to arrange a meeting date and time.

Sincerely,

Charles R. Moore
Field Representative

Cc: Traci Higgins, Director Labor Management & Employee Relations
Theodore Powell

2/04/2010 and is diagnosed as ICD-9CM 309.28 Adjustment Disorder with Mixed
(cont.) Emotional Features. He continues to take his medications: Glyburides,
Actos, Lovastatin, Atenolol, and Diovan as prescribed by his physician.

Mr. Powell stated that he was summoned by court authorities to participate in a urine drug screening in Washington, D.C. on that date with one day advance notice.

Mr. Powell is afraid that he may lose his job, and therefore, his sources of income, retirement, health benefits, vacation and sick leave and reputation as an educational professional. At this time, his psychological and emotional stress is severe (Global Assessment of Functioning, GAF is 50/100).

-M.D. Smith

Michael D. Smith, Ph.D.

LICENSED PROFESSIONAL COUNSELOR

1241 MALL DRIVE
RICHMOND, VIRGINIA 23235
(804) 794-8828

February 8, 2010

Criminal Victims Compensation Program
Attention: Donald Younger
Legal Claims Examiner
515 5th Street N.W.
Rm 109
Washington, DC 20001

Name of Client: Theodore E. Powell
DOB: 9/27/1952
Case Number: 100606

Diagnosis: ICD-9CM 309.81 Post Traumatic Stress Disorder

1/13/2010 Client Ted Powell attended first psychotherapy session (CPT90801). Gave history of professional life. Gave history of being physically assaulted and physically treated on his job as a physical education teacher at the Woodson High School in Washington, D.C. Client gave his history of family life, medical history and current medications for his medical conditions.
-M.D. Smith

1/20/2010 Client Ted Powell attended 2nd psychotherapy session (CPT90806) outlining the traumatic events which occurred to him in the high school during teaching classroom time. Mr. Powell discussed his legal case and charges in detail, and gave the calendar schedule of his upcoming trial hearings in the Washington, D.C. Superior Court. -M.D. Smith

1/28/2010 Client Ted Powell came in for the scheduled psychotherapy session (CPT90806). The session continued from the last visit. -M.D. Smith

2/04/2010 Client Ted Powell came in for scheduled psychotherapy session (CPT90806); continued to discuss traumas at school; pressures of teaching in physical education classes with juvenile delinquent students who defy authority; disobey instructions; do not do homework or classwork; go and come in and out of class when they want to without regard to others; taunt and ridicule Mr. Powell in front of the students.

Mr. Powell continues to suffer from anxiety, depression, anger, frustration,

Theodore Powell
November 5, 2010
Page 3

Nicole Wilds, Director, Employee Services & Benefits
Lisa Richardson, Supervisory Human Resource Specialist
Jana Woods-Jefferson, Director, Retirement & Compensation
Maureen Meyer, Official Personnel Folder
Glenn Bailey, Finance Division
J.W. Harris, Division of Security

protect themselves. This legal-criminal predicament is a great concern for Mr. Powell and continues as a source of emotional distress.

In addition, as you know, the pending charges in criminal court have caused the school system in Washington, D.C. to place Mr. Powell on administrative leave (February 2, 2010), and subsequently, placed on enforced leave (February 11, 2010) which will eventually mean leave without pay after he uses up annual leave. This imminent lack of income is a major source of stress for Mr. Powell since he has no back-up for financial means, such as a wife or significant other.

I am continuing to provide my psychotherapy services to Mr. Theodore Powell until his personal distress approaches normal limits (GAF 78/100 or better).

If you have any questions for me, please call or write.

Sincerely,

A handwritten signature in black ink that reads "Michael D. Smith Ph.D." in a cursive, flowing style.

Michael D. Smith, Ph. D.

Licensed Professional Counselor

Michael D. Smith, Ph.D.

LICENSED PROFESSIONAL COUNSELOR

1241 MALL DRIVE
RICHMOND, VIRGINIA 23235
(804) 794-8828

February 8, 2010

Traci Higgins
Office of Labor Management Employee Relations
825 North Capitol Street, N.E.
6th Floor
Washington, DC 20002

Re: Theodore E. Powell (0859)

Dear Traci Higgins:

Mr. Theodore E. Powell is under my medical care for emotional stress concerning recent events that have occurred in the performance of his duties as a physical education teacher at the Woodson High School in the Washington, D.C. school system.

Mr. Powell reports that he has been repeatedly threatened both verbally and physically by several unruly students during the time period from September 2009 through January 2010. In one situation, a student made a threatening gesture at Mr. Powell's head and in another situation, a student intentionally dropped a steel weight on Mr. Powell's ankle and foot which caused a physical injury that has not completely healed at this time.

I am providing individual psychotherapy services to Mr. Powell on a weekly basis to help him cope, adjust, and manage his levels of psychological and emotional distress. I have diagnosed Mr. Powell as suffering from ICD-9CM 309.28 Adjustment Disorder with mixed emotional features of anxiety, depression, frustration, anger and alienation from the school system where he teaches at Woodson High School. He is undergoing severe distress (Global assessment of functioning, GAF 50/100), because he is afraid that he may lose his job, and therefore, his sources of income, retirement, vacation and sick leave, health benefits (he has several pre-existing medical conditions) and reputation as an educational professional.

On top of these concerns, Mr. Powell states that he has been charged by court authorities in Washington, D.C. with a misdemeanor assault because of a remark which he made to a defiant and threatening student in his class. He reports that he wanted to get the student to leave him alone and leave the classroom; to stop disrupting Mr. Powell's instructions and the other students who were cooperative.

The criminal charges are pending in the Washington, D.C. Superior Court. Mr. Powell feels that he may receive an unfair criminal conviction for his conduct which was in his perception, a self-defensive statement that any ordinary person would do to

JOSEPH, GREENWALD & LAAKE, P.A.
ATTORNEYS AT LAW



Veronica D. Jackson
Attorney at Law

Joseph, Greenwald & Laake, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770
Direct Dial: (240) 553-1187
Direct Fax: (240) 553-1752
Email: vjackson@jgllaw.com

May 13, 2011

VIA FACSIMILE & FIRST CLASS MAIL

Attention: Blanca Torres
Acting Executive Director
DC Public Employee Relations Board
717 14th Street, NW, 11th Floor
Washington, DC 20005
Facsimile: 202-727-9116

RECEIVED
D.C. PERB
2011 JUN -3 AM 11:09

Re: Theodore E. Powell v. American Federation of Teachers, Washington Teachers' Union, et al., PERB Case No. 11-U-26.

Dear Ms. Torres:

Please find the enclosed one (1) original and six (6) copies of Washington Teachers' Union, Nathan Saunders, Clay White, Charles Moore, and Candi Peterson Motion to Dismiss, and alternatively, Answer to Mr. Powell's Complaint in the above-referenced matter.

Respectfully,

JOSEPH, GREENWALD & LAAKE, P.A.

By: 

Veronica D. Jackson

*Counsel for the Defendants Washington Teachers' Union,
Nathan Saunders, Clay White, Charles Moore, and Candi
Peterson*

Cc: Theodore E. Powell, *Pro Se* Plaintiff (via Certified Mail only)
Dan McNeil, Esq., Counsel for Defendants American Federation of Teachers, Randi Weingarten, and Al Squire.

kwiktag ®

090 636 043



JOSEPH, GREENWALD & LAAKE, P.A.
ATTORNEYS AT LAW



Veronica D. Jackson
Attorney at Law

Joseph, Greenwald & Laake, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770
Direct Dial: (240) 553-1187
Direct Fax: (240) 553-1752
Email: vjackson@jglaw.com

May 13, 2011

VIA FACSIMILE & FIRST CLASS MAIL

Attention: Blanca Torres
Acting Executive Director
DC Public Employee Relations Board
717 14th Street, NW, 11th Floor
Washington, DC 20005
Facsimile: 202-727-9116

Re: Theodore E. Powell v. American Federation of Teachers, Washington Teachers' Union, et al., PERB Case No. 11-U-26.

Dear Ms. Torres:

Please find the enclosed one (1) original and six (6) copies of Washington Teachers' Union, Nathan Saunders, Clay White, Charles Moore, and Candi Peterson Motion to Dismiss, and alternatively, Answer to Mr. Powell's Complaint in the above-referenced matter.

Respectfully,

JOSEPH, GREENWALD & LAAKE, P.A.

By: 

Veronica D. Jackson

*Counsel for the Defendants Washington Teachers' Union,
Nathan Saunders, Clay White, Charles Moore, and Candi
Peterson*

Cc: Theodore E. Powell, *Pro Se* Plaintiff (via Certified Mail only)
Dan McNeil, Esq., Counsel for Defendants American Federation of Teachers, Randi Weingarten, and Al Squire.

**Joseph
Greenwald
& Laake**

Attorneys at Law
Joseph, Greenwald & Laake, P.A.
6404 Ivy Lane · Suite 400
Greenbelt, Maryland 20770
(301) 220-2200 · Fax (301) 220-1214
www.jgllaw.com

FAX TRANSMISSION

To: 2027279116
From: Gina Chandler
Subject: Theodore E. Powell v. American Federation of Teachers, Washington Teachers' Union, et al., PERB Case No. 11-U-26.
Date: Monday, April 25, 2011

Message: Attention: Blanca Torres, Acting Executive Director

From: Veronica D. Jackson, Esquire
Operator: Gina L. Chandler

PAGES: 1+Cover

If you do not receive all pages of this transmission and/or are not the intended recipient. Please call 240-553-1172.

Thank you



Public
Employee
Relations
Board

Government of the
District of Columbia



717 14th Street, N.W.
Suite 1150
Washington, D.C. 20005
(202) 727-1822
Fax: (202) 727-9116

April 14, 2011

Nathan Saunders
National Representative
Washington Teachers' Union
1825 K Street, NW
Suite #1050
Washington, D.C. 20006

FAX & U.S. MAIL

Re: Theodore E. Powell v. American Federation of
Teachers/Washington Teachers Union
PERB Case No. 11-U-26

Dear Mr. Saunders:

This office has received for filing, in the above-referenced proceeding, a document styled
"Unfair Labor Practice Complaint."

Pursuant to Board Rule 520.6, your answer to the complaint is due in this office no later than
the close of business (4:45 p.m.) on **May 2, 2011**.

Sincerely,

Blanca E. Torres
Acting Interim Executive Director

cc: Clay White
Charles Moore
Candi Person



Public
Employee
Relations
Board

Government of the
District of Columbia



717 14th Street, N.W.
Suite 1150
Washington, D.C. 20005
(202) 727-1822
Fax: (202) 727-9116

April 5, 2011

Mr. Theodore E. Powell
308 Hodder Lane
Highland Springs, VA 23075

VIA U.S. MAIL

Re: Theodore E. Powell v. American Federation of
Teachers, Washington Teachers Union
PERB Case No. 11-U-26

Dear Mr. Powell:

This is to acknowledge receipt of your Unfair Labor Practice Complaint. After reviewing your submission, I have determined that the item(s) noted below were omitted from your submission. As a result, your submission does not conform with Board Rules.

- (a) The Complainant's signature;
(Board Rule 520.3);
- (b) The name, address and telephone
number of the person, agency or
labor organization filing the request;
(Board Rule 520.3(a));
- © The name, address and **telephone number**
of the person, agency or organization
against whom the unfair labor practice
complaint is made (**Board Rule 520.03 (b)**);
- (d) A clear and concise statement of the
facts constituting the alleged vio-
lation, including the date and the
place of occurrence and a citation
to the provisions of D.C. Law 2-139
alleged to have been violated
(Board Rule 520. 3(d));

X

(e) The effective date and duration of the negotiated labor-management agreement between the parties, or a statement that no such agreement exists;

(f) A statement whether there are any procedures in which the same issues have been raised, including a grievance procedure or mediation (Board Rule 520.3 (f));

(g) Documents submitted to the Board shall be typed or legibly hand-written and limited to twenty (20) double-spaced pages (Board Rule 501.9);

(h) Six (6) legible copies of every document filed with the Board, including exhibits, shall be submitted in addition to the original (Board Rule 501.10);

_____ X

(i) Failure to concurrently serve other parties and to provide a certificate of service (Board Rule 501.12));

_____ *X

(j) A copy of the collective bargaining agreement was omitted (Board Rule 520.3 (g));

(k) Constitution and By Laws were not attached to petition;

(l) Other Reasons:

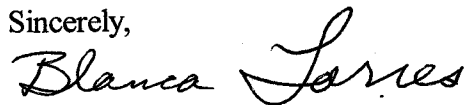
*Date on the certificate of service when the document was served to the parties and how it was served. By mail or hand delivery.

Mr. Theodore E. Powell
PERB Case No. 11-U-26
Page 3

In accordance with Board Rule 501.13, you have ten days from the date of this letter to cure these filing deficiencies. Failure to submit the required information by the close of business (**4:45 p.m.**) on **April 20, 2011**, could result in the dismissal of this action.

Enclosed for you information is a copy of the Board's Rule and a sample unfair labor practice complaint.

Sincerely,

A handwritten signature in cursive script that reads "Blanca Torres".

Blanca E. Torres
Acting Interim Executive Director

Enclosures

cc: Randi Weingarten
 Nathan Saunders
 Clay White
 Charles Moore
 Candi Peterson

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia

Public Employee Relations Board

In the Matter of:
Theodore E. Powell,

Complainant,

v.

Washington Teachers' Union,
American Federation of Teachers, *et al.*,

Respondents.

PERB Case No. 11-U-26

Opinion No. 1255

DECISION AND ORDER

I. Statement of the Case

On April 10, 2011, pursuant to the Comprehensive Merit Personnel Act ("CMPA"), D.C. Code § 1-617.06, Theodore E. Powell ("Complainant") filed an Unfair Labor Practice Complaint ("Complaint") in the above-captioned matter against the Washington Teachers' Union, *et al.* ("Union" or "Respondents"). The Complaint alleges that the Union violated the CMPA by failing to properly represent the Complainant or bargain in good faith with the District of Columbia Public Schools ("DCPS") when challenging his alleged wrongful termination. On June 3, 2011, Respondents filed an Answer and Motion to Dismiss ("Answer").

On October 7, 2011, the Board denied Complainant's Complaint and granted the Respondents' Motion to Dismiss. ___ D.C. Reg. ___, Slip Op. No. 1136, PERB Case No. 11-U-26 (October 7, 2011). In its Decision and Order, the Board denied the Complaint because it was time-barred, did not allege a valid unfair labor practice, and contained additional claims that were outside of the Board's jurisdiction. *Id.*

On February 4, 2012, Complainant filed a document styled "Appeal." The Union responded with a document in opposition to the Complainant's appeal ("Opposition").

II. Discussion

Although Complainant's filing is styled as an appeal, it appears to function as a Motion for Reconsideration of Slip Op. No. 1136. Board Rule 559.2 states that any party may file a Motion for Reconsideration within ten (10) days of the Board's issuance of a Decision and Order. The Board issued its Decision and Order in Complainant's unfair labor practice complaint on October 7, 2011. Complainant's deadline for filing a Motion for Reconsideration was October 17, 2011. Complainant's "Appeal," filed on February 4, 2012, falls far short of the October 17, 2011, deadline.

Therefore, Complainant's filing is untimely and must be dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. Theodore E. Powell's Appeal is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

March 28, 2012.

CERTIFICATE OF SERVICE

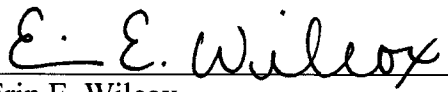
This is to certify that the attached Decision and Order in PERB Case No. 11-U-26 is being transmitted via U.S. Mail to the following parties on this the 28th day of March, 2012.

Theodore E. Powell
308 Hodder Ln.
Highland Springs, VA 23075

U.S. MAIL

Jay P. Holland
Joseph, Greenwald & Laake, P.A.
6404 Ivy Ln.
Ste. 400
Greenbelt, MD 20770
jholland@jgllaw.com

U.S. MAIL & E-MAIL


Erin E. Wilcox
Attorney-Advisor



Public
Employee
Relations
Board

Government of the
District of Columbia



1100 4th Street, S.W.
Suite E630
Washington, D.C. 20024
(202) 727-1822
Fax: (202) 727-9116

March 16, 2012

Jay P. Holland, Esq.
Joseph, Greenwald & Laake, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770

EMAIL & U.S. MAIL

Daniel J. McNeil, Esq.
555 New Jersey, NW
Washington, DC 20001

EMAIL & U.S. MAIL

Re: Theodore E. Powell v. American Federation
of Teachers
PERB Case No. 11-U-26

Dear Representatives:

This office has received for filing, in the above-referenced proceeding, a document titled
"Appeal PERB Case No. 11-U-26."

In accordance with Board Rule 553.2, your response is due in this office no later than the
close of business (4:45 p.m.) on **April 4, 2012.**

Sincerely,

Ondray T. Harris
Executive Director

cc: Theodore E. Powell

In the United States District Court for the District of Columbia

3-26-12

Theodore E. Powell

308 Hodder Lane

Highland Springs, VA. 23075

Cell 804-306 8683

804-328-2782

Plaintiff

2012 MAR 27 PM 12:35

RECEIVED
D.C. PERB

V.

Civil Action No: 1:11-00493 (EGS) JMF

Washington Teachers Union

American Federation of Teachers

Defendants

Plaintiff `s Opposition to the reply memorandum of the Defendants

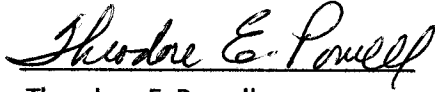
The Defendant Washington Teachers Union, Nathan Saunders,
Clay White and Candi Peterson, Charles Moore

Motion to Stay

The Plaintiff respectfully states that he opposes the Defendants motion to dismiss and is in the process of retaining a lawyer. The Plaintiff asks the U.S. District for consideration until these issues of misrepresentation have been cleared. The Plaintiff asks U.S. District Court for a Stay. W.T.U. and AFT have failed to represent a **UNION MEMBER** after receiving money for the Plaintiff's member services. This is **not frivolous**. This constitutes **fraud and fraud is a crime against the Plaintiff**. The WTU and AFT violated the 5th and 14th Amendments Rights of the Constitution that are protected inalienable rights. The Plaintiff asks The U.S. District Court for an appointment of a lawyer in the defense of Plaintiff `s Civil and Criminal Rights. **Extortion** by Legal Law Definition which include (**Exacting, Ransom, and Emotional Blackmail**) these are criminal acts against the Plaintiff and are **not frivolous** but unconstitutional. These criminal acts are reprimands and retaliation against the Plaintiff which are dehumanizing. The PERB do not have jurisdiction over these criminal acts, this is **not frivolous**. Plaintiff stated Abuse of Teacher's monies, The Plaintiff paid membership services is contributing to **the Union Lawyers' big pay checks** and the Plaintiff has to struggle with everyday survival. The common man, who does not have monies to exercise his rights, loses his existence, by the paid cannibalism sent out to destroy him. That is Capital Punishment by another name. So where is the equal protection under the law in which the 14th and 5th Amendments of the Constitution calls for? Dismiss these Unions lawyers. These are matters that are not clear:

Certificate of Service

I hereby certify that on March 26, 2012 a copy of the foregoing opposition to dismiss was sent to by U.S. Mail to Jay P. Holland, Brian J. Markovitz .Veronica D. Jackson, Joseph, Greenwald & Laake, P.A. 6404 Ivy Lane, Suite 400 Greenbelt, MD 20770 Daniel J. McNeil Esq.555 New jersey AVE, N.W. Washington D.C. 20001 and PERB 1100 4th street S.W. suite E 630 Washington D. C.20024, The Southern Poverty Law Firm, Legal Department, P.O. Box 2087, Montgomery, Alabama 36102-2087



Theodore E. Powell

Civil Action No: 1:11-00493 (EGS) JMF

United States District Court
For District of Columbia

October 14, 2011

Theodore E. Powell
308 Hodder Lane
Highland Springs, VA. 23075
804-328-2782, cell 804 306-8683

Appellant

V.

American Federation of Teachers (7)

Randi Weingarten AFT (1)

Al Squire AFT (2)

555 New Jersey Ave N.W.

Washington, D C 20001

Phone: 202-879-4400

Washington Teachers Union (8)

Nathan Saunders WTU (3)

Clay White WTU (4)

Charles Moore WTU (5)

Mrs. Candi Peterson WTU (6)

1825 K Street, N.W. Suite# 1050

Washington, D.C. 20006

Phone: 202-293-8600

Defendants

CASE NO. 1:11-00493 (EGS)

Appeal

Case No: PERB Case NO. 11-U-26

Comes Now, Your Appellant, Theodore E. Powell, Pro 'Se and hereby files this complaint for Black Mailing, breach of contract, employment discrimination, violation of the collective bargaining agreement, misrepresentation and unfair labor practices. Jurisdiction in this case is based on the allegations giving rise to this complaint occurred in the District of Columbia. The Appellant is a resident of Virginia. The Defendants reside or do business in the District of Columbia. The statute of limitation is within designated time and there is no Immunity issue. This action is brought pursuant to violations of Title VII of the Civil Rights of 1964 as amend. This complaint shows cause and damages to the Appellant as the of result extrinsic fraud, malpractice medical and deceit used to favor opinions to violate the Plaintiff's 14th and 5th amendment rights, The Union is a crime organization as the Mafia,

RECEIVED

OCT 14 2011

Clark, H. S.

Leave to
File is
Denied
NO FINE
ORIGINAL
EXISTS
APPEAL
FROM
10/25/11

In the United States District Court for the District of Columbia

2-11-2012

Theodore E. Powell
308 Hodder Lane
Highland Springs, VA. 23075
Cell 804-306 8683
804-328-2782
Plaintiff

V.

Civil Action No: 1:11-00493 (EGS)

Washington Teachers Union
Defendants

Motion for Judicial Notice

Comes now, your Plaintiff Theodore E. Powell, and files this motion for back payment that the Washington Teacher Union and District of Columbia Public Schools fail to pay the Plaintiff under the contract agreement, that the Plaintiff is due now. This back money will insure that the Plaintiff will have legal representation in this court of law.

1. The Plaintiff states unfair law practices as the Washington Teachers Union stated to Plaintiff that they would represent the Plaintiff in March of 2011, but they never did and they allowed the time to run out, with their fake grievance procedure dated November 8.2010. The PERB stating Timed barred. This is unfair law practices and they need to be punished. Please appoint the Plaintiff a lawyer in these matters.
2. The Plaintiff states that that he was proven not guilty in a court of law on September 27, 2010 in court. Case Number 2010 CMD 000144 C. The Plaintiff was assaulted over seven times and the only support came from Crime Victim of The Superior Court.
3. The Plaintiff states District of Columbia Code 32-1303, final check must be given on the next business day and the final check must be given on the next scheduled payday or within seven days, which occurs first. One year has passed.
4. The Plaintiff states DC Law 1620.15... If the basis for placing an employee on enforced leave pursuant to this section does not result in disciplinary action pursuant to the provision of this chapter, any leave, compensatory time, or pay lost as a result of the administrative action shall be restored retroactively? The Plaintiff states this is being ignored by the Washington Teacher Union and The District of Columbia Public Schools this is punishment and discrimination.

5. The Plaintiff states that violation of 5th amendment rights while under the jurisdiction of the Superior Court by the District of Columbia Public Schools

6 The Plaintiff states that District of Columbia Public Schools violated their own Administrative procedures as pertains to "Fitness for Duty" and Dr. Arthur Webb. The Doctor Webb has provided false and misleading information to the District of Columbia Public Schools.

What questions did I not answer and could Doctor Webb provide a list of his test battery for the court.

7. The Plaintiff states that a deposition needs to be taken on Doctor Webb as he lied to his professional board that the Plaintiff picked his name from a list of doctors when the Plaintiff was ordered to him, which violated administrative procedures.

8. The Plaintiff states that he was never placed on Administrative leave for "Fitness for Duty" and should be back working at his teaching position. The Plaintiff over came the issue that placed him on administrative leave that deal with the court case.

9. The Plaintiff states extortion as the means of punishment by the Washington Teacher Union without medical benefits and money to represent, the Plaintiff, it is evident that complications of Plaintiff's health would probably be fatal over a period time of suffering and pain. This is murder.

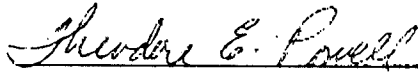
10. The Plaintiff states that Washington Teacher Union will not give up their rights to represent the Plaintiff, so the Plaintiff cannot pursuit his case against the District of Columbia School System as stated by Candi Peterson and Nathan Saunders. Now that Candi Peterson have been fired by WTU to cover up their extortion punishment and jamming the process up, that they were paid to represent.

11. The Plaintiff motions for Judicial Notice in This Honorable Court for protection under law from these acts of extortion, fraud, discrimination, violation of 5th amendment rights and Back pay by WTU, Administrators and Agents who are failing to their jobs, deliberately, causing pain and suffering to this Plaintiff.

12. The Plaintiff asks this Honorable Court to appoint the Plaintiff a lawyer for the Criminal Case as well as the Civil Case.

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on February 11, 2012, a copy of the foregoing Motion for Judiciary Notice was sent by mail to Joseph, Greenwald, and Laake P.A. at 6404 Ivy Lane Suite 400 Greenbelt, Maryland, 20770 C/O Jay P. Holland, Brian J. Markovity and Puja Gupta.

A handwritten signature in cursive script, reading "Theodore E. Powell", is written over a horizontal line.

Theodore E. Powell



Washington Teachers' Union

Local 6 of the American Federation of Teachers, AFL-CIO

George Parker
resident

November 8, 2010

Kaya Henderson, Interim Chancellor
District of Columbia Public Schools
1200 First Street, NE, 12th Floor
Washington, DC 20002

Dear Chancellor Henderson:

The Washington Teachers' Union hereby invokes Step II of the grievance and arbitration procedure in accordance with Article VI of the Agreement between the Washington Teachers' Union and the District of Columbia Public Schools on behalf of Mr. Theodore Powell. Mr. Powell is assigned to Woodson SHS.

The grievance concerns the termination of Mr. Powell, effective November 30, 2010 for insubordination.

The Union files this grievance under Articles VI, VII, and other applicable Articles and DCMR(5). It is requested that the termination be rescinded, thereby restoring all lost salaries, benefits, and privileges of employment. In other words, the Union requests that Mr. Powell be made whole.

Please contact me at (202) 293-8624 to arrange a meeting date and time.

Sincerely,

Charles R. Moore
Field Representative

Cc: Traci Higgins, Director Labor Management & Employee Relations
Theodore Powell



Superior Court of the District of Columbia
Criminal Division
500 Indiana Ave., NW
Washington, D.C. 20001



October 13, 2010

Defendant's Name: **THEODORE E. POWELL**

Case Number: **2010 CMD 000144 C**

PDID #: **631661**

DOB: **09/27/1952**

Date of Offense: 12/10/2009

Charge(s)

Attempted Threats to Do Bodily Harm -Misd

Disposition

Court Trial Not Guilty

Disposition Date

09/29/2010

Under the seal of this Court, the foregoing is a true copy of the disposition of the above listed case in the Superior Court of the District of Columbia.


Deputy Clerk, Damon Privott

Acquitted

The legal and formal certification of the innocence of a person who has been charge with a crime. A finding of not guilty.

Dismissed for Want of Prosecution

An order or judgment disposing of the charges without a trial. An involuntary dismissal accomplished on the Court's own motion for lack of prosecution or on motion from the defendant for lack of prosecution or failure to introduce evidence of facts on which relief may be granted. The dismissal is without prejudice which allows the prosecutor the right to re-bring the charges at a later date.

Dismissal

The United States Attorney's Office of the District of Columbia or the Office of the Attorney General for the District of Columbia filed a Dismissal for the incident that lead to your arrest. This means that the arrest charge has been dismissed without prejudice.

Found Guilty - Plea

Formal admission in court as to guilt of having committed criminal act charged which a defendant may make if he or she does so intelligently and voluntarily. It is equivalent to and is binding as a conviction after trial and it has the same effect as a verdict of guilty and authorizes imposition of punishment prescribed by law.

Non Jury Trial Guilty

Trial held before a Judge sitting without a jury. Pronouncement by a Judge adjudging the defendant guilty of the offense charged.

Subj: (no subject)
Date: 12/7/2010 1:13:22 A.M. Eastern Standard Time
From: Tp89@aol.com
To: kaya.henderson@dc.gov, mbowser@dccouncil.us, mbany@dccouncil.us, nasaunders@aol.com, asquire@aft.org
CC: lucyredwards@verizon.net, idevita@devitalaw.com
12-7-10

Since my so called termination was 11-30 -10 and the enforced leave law states that all back pay is restored retroactively. So why is Traci Higgins discriminating again me. 12-3-10 was the next final check payday.

1620.14 An employee shall remain on enforced leave until such time as disciplinary action, in accordance with this chapter and taken as a result of the event that caused the administrative action, is effected, or a determination is made that no disciplinary action will be taken.

1620.15 If the basis for placing an employee on enforced leave pursuant to this section does not result in disciplinary action pursuant to the provisions of this chapter, any annual leave, compensatory time, or pay lost as a result of the administrative action shall be restored retroactively.

Final Paycheck laws

District of Columbia (D.C. Code § 32-1303)	Final check must be given on the next business day.	Final check must be given on the next scheduled payday, or within seven days, which occurs first.
--	---	---

Subj: (no subject)
Date: 11/16/2010 4:04:55 P.M. Eastern Standard Time
From: Tp89@aol.com
To: cwhite@local6.org, CMoore@wtulocal6.org, kaya.henderson@dc.gov, traci.higgins@dc.gov
CC: devita@devitalaw.com, shcila.barfield@dc.gov, gparker@wtulocal6.org, john.davis@dc.gov

11-16-10

Doctor Arthur L Webb stated under investigation by the Enforcement Division of the Commonwealth of Virginia, that I picked his name from a list of doctors to come for fitness for duty and had a choice not come.

This is not a part of the Court Paper. But This Fake Doctor is the cause. He lied about the Fitness For Duty. He had no Test, NO paper work to fill out. He was to give them a letter to fire me. Then he lied to the Enforcement Division of the Commonwealth of Va. saying that I picked his name from a list of Doctor. When I was forced to go there. I asked the Union for representation and they Refused to go.

Powell



DISTRICT OF COLUMBIA
PUBLIC SERVICE

Fitness for Duty Evaluation

Contact Information:

Address: Dr. Arthur Webb
3219 Columbia Pike, Suite 103
Arlington, VA 22204

Phone: 703-778-4762
Please specify that you are calling to schedule a Fitness for Duty Evaluation

Hours: Monday – Friday 8:30 am – 4:30 pm
(closed for lunch 12:00 pm – 1:00 pm)

Office Information:

Dr. Webb's office is in Westmont Professional Building. Enter via the walkway located past Boston Market and Papa John's Pizza.

Parking Information:

Metered parking is available along Columbia Pike. Please do not park in Westmont Shopping Center as they frequently tow vehicles that are parked for Westmont Professional Building.

Metro Accessibility:

Dr. Webb's office is accessible using metro rail and bus. Take the metro to Pentagon Station (Blue/Yellow line) and take any of the "16" buses labeled "Columbia Pike Line." There is a bus stop in front of Westmont Shopping Center, which is next to the Westmont Professional Building.

Superior Court of the District of Columbia

CIVIL DIVISION

500 Indiana Avenue, N.W., Room 5000

Washington D.C. 20001

October 14, 2011

Theodore E. Powell
308 Hodder Lane
Highland Springs, VA. 23075
804-328-2782 , cell 804 306-8683

Appellant

V.

American Federation of Teachers (7)

Randi Weingarten AFT (1)

Al Squire AFT (2)

555 New Jersey Ave N.W.

Washington, D C 20001

Phone: 202-879-4400

Washington Teachers Union (8)

Nathan Saunders WTU (3)

Clay White WTU (4)

Charles Moore WTU (5)

Mrs. Candi Peterson WTU (6)

1825 K Street, N.W. Suite# 1050

Washington, D.C. 20006

Phone: 202-293-8600

Defendants**Appeal**

Case No: PERB Case NO. 11-U-26

Comes Now, Your Appellant, Theodore E. Powell, Pro 'Se and hereby files this complaint for Black Mailing, breach of contract, employment discrimination, violation of the collective bargaining agreement, misrepresentation and unfair labor practices. Jurisdiction in this case is based on the allegations giving rise to this complaint occurred in the District of Columbia. The Appellant is a resident of Virginia. The Defendants reside or do business in the District of Columbia. The statute of limitation is within designated time and there is no Immunity issue. This action is brought pursuant to violations of Title VII of the Civil Rights of 1964 as amend. This complaint shows cause and damages to the Appellant as the of result extrinsic fraud, malpractice medical and deceit used to favor opinions to violate the Plaintiff's 14th and 5th amendment rights, The Union is a crime organization as the Mafia,

FAX

ATTN. Mr. david washington

Fax Number 12027279116

Phone Number 12027271822

FROM theodore powell

Fax Number 8043282782

Phone Number

SUBJECT review

Number of Pages 3

Date 3/6/2012

MESSAGE

after your order I filed with Superior Court...they stated that U.S.District court had Jurisdiction over the case... then EGS denied ... that their is no final order

Superior Court of the District of Columbia**CIVIL DIVISION**

500 Indiana Avenue, N.W., Room 5000

Washington D.C. 20001

October 14, 2011

Theodore E. Powell
308 Hodder Lane
Highland Springs, VA.23075
804-328-2782 ,cell 804 306-8683

Appellant

V.

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1825 K Street, N.W. Suite# 1050

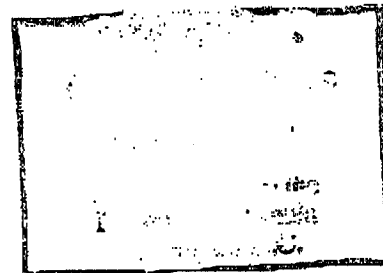
Washington, D.C. 20006

Phone: 202-293-8600

Defendants**Appeal**

Case No: PERB Case NO. 11-U-26

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United States District Court For District of Columbia

October 14, 2011

Theodore E. Powell
308 Hodder Lane
Highland Springs, VA. 23075
804-328-2782, cell 804 306-8683

Appellant

V.

American Federation of Teachers (7)

Randi Weingarten AFT (1)

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555 New Jersey Ave N.W.

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Charles Moore WTU (5)

Mrs. Candi Peterson WTU (6)

1825 K Street, N.W. Suite# 1050

Washington, D.C. 20006

Phone: 202-293-8500

Defendants

Appeal

Case No: PERB Case NO. 11-U-26

Comes Now, Your Appellant, Theodore E. Powell, Pro 'Se and hereby files this complaint for Black Mailing, breach of contract, employment discrimination, violation of the collective bargaining agreement, misrepresentation and unfair labor practices. Jurisdiction in this case is based on the allegations giving rise to this complaint, occurred in the District of Columbia. The Appellant is a resident of Virginia. The Defendants reside or do business in the District of Columbia. The statute of limitation is within designated time and there is no immunity issue. This action is brought pursuant to violations of Title VII of the Civil Rights of 1964 as amend. This complaint shows cause and damages to the Appellant as the of result extrinsic fraud, malpractice medical and deceit used to favor opinions to violate the Plaintiff's 14th and 5th amendment rights, The Union is a crime organization as the Mafia,

RECEIVED

OCT 14 2011

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

CASE NO. 1:11-00493 (EGS)

Leave to
File is
permitted.
No final
order
exists to
appeal
from.
10/25/11



WELCOME TO THE
District of Columbia Courts

Court Cases Online

Case Search for Person: POWELL, THEODORE

Search retrieved 14 cases in less than a second.

Selected 1 cases to view

Viewing single case; Details retrieved in less than a second.

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2011 CA 001025 B: POWELL, THEODORE E Vs. AMERICAN FEDERATION OF TEACHERS, AFL-CIO, et al.

Case Type: Civil II	File Date: 02/09/2011
Status: Closed	Status Date: 02/09/2011
Disposition: Notice Of Removal To USDC	Disposition Date: 03/03/2011

Party Name	Party Alias(es)	Party Type	Attorney(s)
POWELL, THEODORE E		PLAINTIFF	PRO SE
AMERICAN FEDERATION OF TEACHERS, AFL-CIO		Defendant	MCNEIL, Mr DANIEL J J
WASHINGTON TEACHERS UNION, LOCAL 6		Defendant	GUPTA, PUJA HOLLAND, Mr JAY P
SQUIRE, AL		Defendant	
WEINGARTEN, RANDI		Defendant	
SAUNDERS, NATHAN		Defendant	GUPTA, PUJA HOLLAND, Mr JAY P
WHITE, CLAY		Defendant	GUPTA, PUJA HOLLAND, Mr JAY P
MOORE, CHARLES		Defendant	GUPTA, PUJA HOLLAND, Mr JAY P MARKOVITZ, BRIAN J
PETERSON, CANDI		Defendant	GUPTA, PUJA HOLLAND, Mr JAY P

Docket Date	Description	Messages
03/14/2011	Notice of Hearing Mailed Next Business Day	Notice of Hearing Mailed Next Business Day Notice Of Removal Sent on: 03/14/2011 12:18:09
03/09/2011	Proof of Service	Proof of Service Method : Service Issued

		<p> Issued : 02/11/2011 Service : Summons Issued Served : 03/07/2011 Return : 03/09/2011 On : AMERICAN FEDERATION OF TEACHERS, AFL-CIO Signed By : Nathan Saunders Reason : Proof of Service Comment : Tracking # : 5000092353 </p>
03/09/2011	Notice of Acknowledgment of Service Filed	Notice of Acknowledgment of Receipt of Summons, Complaint & Initial Order on AMERICAN FEDERATION OF TEACHERS, AFL-CIO (Defendant);
03/03/2011	Notice of Removal to USDC Filed	Notice of Removal to USDC For the District of Columbia. 11-cv-493
03/03/2011	Notice of Removal to USDC Filed	<p> Notice of Filing of Notice of Removal Filed. submitted 03/03/2011 16:06. cms. Attorney: GUPTA, PUJA (987800) WASHINGTON TEACHERS UNION, LOCAL 6 (Defendant); NATHAN SAUNDERS (Defendant); CLAY WHITE (Defendant); CHARLES MOORE (Defendant); CANDI PETERSON (Defendant); </p>
03/01/2011	Motion to Dismiss Filed	<p> Motion to Dismiss. Filed. Submitted. 03/01/2011 11:36. ncv. Attorney: MCNEIL, Mr DANIEL JJ (455712) AMERICAN FEDERATION OF TEACHERS, AFL-CIO (Defendant); Receipt: 189114 Date: 03/02/2011 </p>
02/11/2011	Service Issued	<p> Issue Date: 02/11/2011 Service: Summons Issued Method: Service Issued Cost Per: \$ AMERICAN FEDERATION OF TEACHERS, AFL-CIO 555 New Jersey Avenue NW WASHINGTON, DC 20001 Tracking No: 5000092353 WASHINGTON TEACHERS UNION, LOCAL 6 1825 K Street, NW Suite 1050 WASHINGTON, DC 20006 Tracking No: 5000092354 SQUIRE, AL 555 New Jersey Avenue, NW WASHINGTON, DC 20001 Tracking No: 5000092355 WEINGARTEN, RANDI 555 New Jersey Avenue, NW WASHINGTON, DC 20001 Tracking No: 5000092356 SAUNDERS, NATHAN 1825 K Street, NW </p>

		<p>Suite 1050 WASHINGTON, DC 20006 Tracking No: 5000092357</p> <p>WHITE, CLAY 1825 K Street, NW Suite 1050 WASHINGTON, DC 20006 Tracking No: 5000092358</p> <p>MOORE, CHARLES 1825 K Street, NW Suite 1050 WASHINGTON, DC 20006 Tracking No: 5000092359</p> <p>PETERSON, CANDI 1825 K Street, NW Suite 1050 WASHINGTON, DC 20006 Tracking No: 5000092360</p>
02/10/2011	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s)	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s)(Al Squire)by the Clerk Pursuant to SCR 54-II this date: AMERICAN FEDERATION OF TEACHERS, AFL-CIO (Defendant);
02/10/2011	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s)	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s)(Randi Weingarten) by the Clerk Pursuant to SCR 54-II this date: AMERICAN FEDERATION OF TEACHERS, AFL-CIO (Defendant);
02/10/2011	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s)	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s) (Washington Teachers Union) by the Clerk Pursuant to SCR 54-II this date: AMERICAN FEDERATION OF TEACHERS, AFL-CIO (Defendant);
02/10/2011	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s)	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s) (Nathan Saunders) by the Clerk Pursuant to SCR 54-II this date: AMERICAN FEDERATION OF TEACHERS, AFL-CIO (Defendant);
02/10/2011	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s)	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s)(Clay White) by the Clerk Pursuant to SCR 54-II this date: AMERICAN FEDERATION OF TEACHERS, AFL-CIO (Defendant);
02/10/2011	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s)	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s)(Charles Moore) by the Clerk Pursuant to SCR 54-II this date: AMERICAN FEDERATION OF TEACHERS, AFL-CIO (Defendant);

	Acknowledgment Form mailed to Deft(s)	
02/10/2011	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s)	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s) (Mrs Candi Peterson) by the Clerk Pursuant to SCR 54-II this date: AMERICAN FEDERATION OF TEACHERS, AFL-CIO (Defendant);
02/10/2011	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s)	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s) (American Federation of Teachers) by the Clerk Pursuant to SCR 54-II this date: 2/9/11 TS AMERICAN FEDERATION OF TEACHERS, AFL-CIO (Defendant);
02/09/2011	Order Granting Motion to Proceed In Forma Pauperis Entered on the Docket	Order Granting Motion to Proceed In Forma Pauperis Entered on the Docket
02/09/2011	Motion to Proceed In Forma Pauperis Filed	Motion to Proceed In Forma Pauperis Filed Attorney: PRO SE (999999)
02/09/2011	Event Scheduled	Event Scheduled Event: Initial Scheduling Conference-60 Date: 05/27/2011 Time: 9:30 am Judge: ZELDON, JOAN Location: Courtroom A-51
02/09/2011	Complaint for Deceit (Misrepresentation) Filed	Complaint for Deceit (Misrepresentation) Filed Attorney: PRO SE (999999)

Receipt #	Date	From	Payments	Fee	Amount Paid
189114	03/02/2011	MCNEIL, DANIEL J	Recdec \$20.00	Cost \$20.00	\$20.00

District of Columbia Courts (202) 879-1010 TTY TDD Directory	Telephone Directory by Topic Site Map D.C. Government Web Site	Moultrie Courthouse 500 Indiana Ave., N.W. Washington, DC 20001
	Feedback Accessibility Privacy & Security Terms & Conditions	

HP OfficeJet G Series G85
Personal Printer/Fax/Copier/Scanner

Fax-History Report for
Theodore E. Powell
8043282782
Sep 19 2011 11:50am

Last Fax

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Sep 19	11:49am	Received		0:36	0	No fax

HP OfficeJet G Series G85
Personal Printer/Fax/Copier/Scanner

Fax-History Report for
Theodore E. Powell
8043282782
Sep 19 2011 11:50am

Last Fax

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Sep 19	11:49am	Received		0:36	0	No fax

David
Washington

David
Washington

October 7, 2011

Jay P. Holland
Brian J. Markovitz
Veronica D. Jackson
Joseph, Greenwald & Laake, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770

VIA FAX AND U.S. MAIL

Daniel J. McNeil, Esq.
555 New Jersey Ave., N.W.
Washington, D.C. 20001

VIA FAX AND U.S. MAIL

Theodore E. Powell
308 Hodder Lane
Highland Springs, VA 23075

VIA U.S. MAIL

Mrs. Candi Peterson
Washington Teachers Union
1825 K Street, N.W., Suite 1050
Washington, D.C. 20006

VIA U.S. MAIL

Re: Theodore E. Powell v. Washington Teachers' Union,
American Federation of Teachers, et al.
PERB Case No. 11-U-26, Slip Opinion No. 1136

Dear Representatives:

On September 16, 2011, this office transmitted via facsimile and U.S. Mail, a copy of Slip Opinion No. 1136 concerning the above referenced matter. Unfortunately, the decision and order that was transmitted contained a typographical error. Specifically, page 1 of the Slip Opinion identified the PERB Case No. as 10-U-26 rather than the correct number 11-U-26. As a result, please discard the September 16th transmission and replace it with the enclosed corrected copy. I apologize for any inconvenience caused by this error.

Sincerely,


Ondray T. Harris
Executive Director

Enclosure:

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia

Public Employee Relations Board

In the Matter of:
Theodore E. Powell

Complainant,

and

Washington Teachers' Union,
American Federation of Teachers, *et al.*

Respondents.

PERB Case No. 11-U-26

Opinion No. 1136

Motion to Dismiss
Corrected Copy

DECISION AND ORDER

I. Statement of the Case:

On April 10, 2011, Theodore E. Powell ("Complainant") filed an Unfair Labor Practice Complaint ("Complaint") in the above captioned matter against the American Federation of Teachers, AFL-CIO, et al ("Union, "respondent") pursuant to the Comprehensive Merit Personnel Act ("CMPA"), D.C. Code § 1-617.06. The Complaint alleges that the Union violated the CMPA by failing to properly represent the Complainant, or bargain in good faith, with the District of Columbia Public Schools ("DCPS") when challenging his alleged wrongful termination. As relief, the Complainant seeks compensation, reinstatement to his position, and WTU assistance or representation.

Before the Board are the Complainant's amended Complaint and the Union's Answer and Motion to Dismiss. The issue before the Board is whether the Union breached its duty of fair representation by engaging in conduct or acts that were either arbitrary, discriminatory or done in bad faith.

II. Discussion:

The Board has held that while a Complainant need not prove their case on the pleadings, they must plead or assert allegations that, if proven, would establish the alleged violations of the

Decision and Order
PERB Case No. 11-U-26
Page 2

CMPA. See *Virginia Dade v. National Association of Government Employees, Service Employees International Union*, Local R3-06, 46 DCR 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); and see *Gregory Miller v. American Federation of Government Employees*, Local 631, AFL-CIO and D.C. Department of Public Works, 48 DCR 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994); See also *Doctors' Council of District of Columbia General Hospital v. District of Columbia General Hospital*, 49 DCR 1137, Slip Op. No. 437, PERB Case No. 95-U-10 (1995). Furthermore, the Board views contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. See *JoAnne G. Hicks v. District of Columbia Office of the Deputy Mayor for Finance, Office of the Controller and American Federation of State, County and Municipal Employees*, District Council 20, 40 DCR 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992). Without the existence of such evidence, Respondent's actions cannot be found to constitute the asserted unfair labor practice. Therefore, a Complaint that fails to allege the existence of such evidence, does not present allegations sufficient to support the cause of action." *Goodine v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

On December 19, 2009, the Complainant was placed on paid administrative leave from Woodson High School in the District of Columbia. The Complainant was criminally charged and was prevented from entering on District of Columbia Public School property. The complainant attended a "Fitness for Duty" exam with a Doctor Webb but alleges a lack of fair representation by the Washington Teachers' Union. Further allegations include: that the Complainant was injured at work as the principal at Woodson High School but was not afforded representation by the Washington Teachers' Union and, thus, did not receive any workers' compensation, that he was assaulted by students - assaults which went unreported by the Metropolitan Police Department, that he sustained nerve damage and Post Traumatic [Stress] Syndrome; and that WTU failed to provide him with new counsel to represent him on criminal charges. The Complainant maintains that on December 7, 2010, Mr. Ali from the Employment Commission stated that the commission received a statement that the Complainant was still a part of the school district as of December 22, 2010, but was not yet getting paid.

A. Complainant's Complaint is Time Barred and Must be Dismissed

This Complaint is time barred under PERB Rule 520.4, which states that an unfair labor practice complaint "shall be filed not later than 120 days after the date on which the alleged violations occurred." See also *Gibson v. D.C. Pub. Empl. Rels. Bd*, 785 A.2d 1238,1241 (D.C. 2001). "PERB's rule concerning the time for filing exemplifies the principle that 'the time limits for filing appeals with administrative adjudicative agencies ... are mandatory and jurisdictional.'" *Gibson*, 785 A.2d at 1241 (quoting *Hoggard v. District of Columbia Public Employee Relations Board*, 655 A.2d 320,323 (D.C. 1995) (ellipse in original); *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Dep't*, 593 A.2d 641,643 (D.C.1991).

According to his own allegations, Mr. Powell was placed on administration leave on December 19, 2009. The latest factual allegation in the Complaint, although its relevance to this case is unclear, occurred on December 7,2010, when Complainant alleges that "Mr. AH from Employment Commission stated the commission received a statement that the Complainant was still apart [sic] of school district as

Decision and Order
PERB Case No. 11-U-26
Page 3

of December 22, 2010 and yet is not being paid." By even the most generous interpretation of the Complaint, the alleged violations for which he seeks redress occurred in 2010, more than 120 days before he filed this Complaint. Complainant bears the burden to establish that his claims are not time barred, and he has failed to do so. Therefore, his complaint must be dismissed in its entirety with prejudice. *Eg. Gibson*, 785 A.2d 1238; PERB Rule 520.4.

B. Complainant Has Not Alleged a Valid Unfair Labor Practice

In order to state a valid unfair labor practice complaint, Complainant must allege that his termination by DCPS violated the collective bargaining agreement and that the WTU treated him in an arbitrary or discriminatory manner or in bad faith. Complainant fails to allege that his dismissal from DCPS was in violation of the collective bargaining agreement. *See Gibson v. D.C. Pub. Empl Rets. Bd.* 785 A.2d 1238, 1243 (D.C. 2001) ("judgmental acts of discretion in the handling of a grievance, including the decision to arbitrate, do not constitute the requisite arbitrary, discriminatory, or bad faith element of such a violation") (citation omitted).

Mr. Powell's filing here is similar to *Gibson*. In *Gibson*, 785 A.2d at 1242, the court "agree[d] with PERB's conclusion that [Ms. Gibson] failed to state a claim against her union." *Id.* In this regard, "[Complainant]'s complaint, even if accepted as true, alleges only that the union did not properly grieve her termination. Such an allegation cannot be construed as a claim of an unfair labor practice." *Id.* Similarly, Mr. Powell's complaint here alleges that the WTU refused to represent him at a fitness for duty exam, or to provide him alternative counsel when it had already provided him with competent counsel in a criminal case- all equally discretionary, judgmental acts, which do not rise to the level of an Unfair Labor Practice. *Id.* In fact, representation in a criminal manner is not a part of WTU's duty of fair representation but rather was done as a courtesy service to its member.

Furthermore, with respect to the individual WTU Respondents, Nathan Saunders, Charles Moore, Candi Peterson, and Clay White, Complainant fails to allege sufficient conduct by any of them that, if true, would constitute an unfair labor practice. For these reasons, Complainant's Complaint must be dismissed in its entirety with prejudice.

C. Complainant's Additional Claims Cannot Be Heard By the Board

The Complainant alleges numerous other wrongs that fall outside of the Board's jurisdiction (i.e., fraud, neglect, blackmail, and violation of the Complainant's 5th and 14th amendment rights). Claims of this sort are not unfair labor practices. Therefore, these claims should be dismissed as failing to give rise to a cause of action within PERB's jurisdiction: *See D. C. Code* §§ 1-617.02, 1-617.04.

Decision and Order
PERB Case No. 11-U-26
Page 4

ORDER

IT IS HEREBY ORDERED THAT:

1. Theodore E. Powell's Unfair Labor Practice Complaint is denied.
2. The Washington Teacher's Union, American Federation of Teachers', *et al.* Motion to Dismiss is **GRANTED**.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

October 7, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-26 was transmitted via Fax and U.S. Mail to the following parties on this 7th day of October 2011.

Jay P. Holland
Brian J. Markovitz
Veronica D. Jackson
Joseph, Greenwald & Laake, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770

FAX & U.S. MAIL

Daniel J. McNeil, Esq.
555 New Jersey Ave., N.W.
Washington, D.C. 20001

FAX & U.S. MAIL

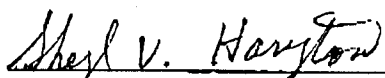
Theodore E. Powell
308 Hodder Lane
Highland Springs, VA 23075

U.S. MAIL

Courtesy Copy:

Mrs. Candi Peterson
Washington Teachers Union
1825 K Street, N.W., Suite 1050
Washington, D.C. 20006

U.S. MAIL



Sheryl V. Harrington
Secretary